

BUREAU OF HEALTH SYSTEMS

Complaint and Facility Reported Incident Manual

TABLE OF CONTENTS

Chapter 1 Introduction

PAGE

1000	Introduction.....	6
-------------	-------------------	---

Chapter 2 Regulatory Background

2100	Licensing and Certification Requirements for Health Care Facilities and Other Agencies.....	7
2200	Other Agencies Involved in Health Facility Oversight.....	8

Chapter 3 Legal Requirements, Definitions, and Bureau Policies

3000	Purpose.....	9
3100	Legal Requirements Relating to Complaints	9
3110	Michigan Public Health Code.....	9
3120	Michigan Nursing Home Rules	11
3130	CMS Long Term Care Requirements	12
3200	Legal Requirements Relating to Abuse, Neglect And Misappropriation	13
3210	Michigan Public Health Code.....	13
3220	CMS Long Term Care Requirements	17
3230	Michigan Adult Protective Services Act.....	18
3300	Definitions of Abuse, Neglect And Misappropriation and Related Terms.....	18
3310	Abuse	18
3311	Physical Abuse.....	19
3312	Mental or Emotional Abuse	20
3313	Involuntary Seclusion	20
3314	Sexual Abuse	21
3320	Neglect.....	21
3330	Misappropriation.....	22
3340	Mistreatment	23
3400	Bureau Policies Regarding Implementation of the State and Federal Requirements Regarding Abuse, Neglect And Misappropriation	23
3410	Requirement for “Immediate” Reporting.....	23
3420	Facility Responsibility to Investigate and Prevent Further Abuse.....	24
3430	Employee vs. Non-Employee Abuse, Neglect And Misappropriation	24
3440	Facility Culpability	24
3441	Involvement of Facility Employees or Agents	24
3442	Involvement of Non-Employees.....	24

Chapter 4

Complaints Involving Health Facilities

4100	Right to File a Complaint.....	26
4200	Content of Complaint.....	26
4300	Anonymous Complaints.....	26
4400	Confidentiality of Complainant's Name for Complaints Involving Nursing Homes.....	27
4500	Confidentiality of Complainant's Name for Complaints Involving Other Classes of Health Care Facilities	27
4600	Time Limit For Nursing Home Complaints.....	27
4700	Methods For Filing Complaints	27
4800	Freedom from Retaliation	28
4900	Acknowledgment of Complaints	28

Chapter 5

Nursing Home Responsibilities Regarding Complaints and Abuse, Neglect And Misappropriation

5000	Purpose.....	29
5100	Complaint Process Requirements	29
5200	Abuse, Neglect and Misappropriation Requirements	31
5210	Written Policies And Procedures	31
5211	Screening Requirement for Potential Employees	31
5212	Reporting.....	32
5220	Abuse Prevention Program	32
5230	Adoption and Implementation of Preventative Administrative Policies	32
5240	Facility Investigation and Reporting of Incidents.....	33
5241	Investigation	33
5242	Incidents that Need to be Reported.....	33
5243	Incidents that Do Not Need to be Reported.....	34
5244	Waiver of Civil Fines Against Facility Which Reports Timely	34
5250	Procedure for Reporting to the Bureau	34
5251	How to Report.....	34
5252	Information to be Reported.....	34
5253	When to Report.....	34
5260	Procedure for Reporting Under the Adult Protective Services Act	35
5270	Bureau Actions When A Facility Fails To Report.....	36
5271	General Actions	36
5272	Failure to Report	36
5273	Failure to Report Under Adult Protective Services Act.....	36
5280	Special Requirements For Plans Of Correction In Response To Abuse, Neglect, Or Misappropriation	36

Chapter 6

Bureau Investigations

6000	Bureau Responsibilities	37
6100	Review of Complaints and Facility Reported Incidents	37
6200	Prioritization of Complaints and Facility Reported Incidents	37
6300	Timing of Investigations	39
6310	Long-Term Care Facilities	39
6320	Other Facilities and Agencies	40
6400	Complaint and Facility Reported Incident Investigation Responsibilities	40
6500	General Investigative Process	41
6510	Evidentiary Considerations	41
6600	Compliance Determination and Citations for Noncompliance	42
6700	Determination of Citation Scope and Severity Levels for Federal Citations.....	42
6800	Issuance of Report to the Complainant	43
6810	Complainant's Right to Contest Department Actions	43
6900	Issuance of Report and Enforcement Actions to the Facility	43
6910	Preliminary Actions in Immediate Jeopardy or Serious Harm Cases.....	44
6920	Actions in All Cases.....	44
6950	Responsibility Of Other Governmental Agencies	45

Chapter 7

Bureau Investigative Processes

7000	Introduction.....	46
7100	General Investigative Process	46
7110	Abbreviated Standard Survey	46
7120	Additional Issues Related to the Abbreviated Standard Survey	51
7200	Investigation Processes for Specific Issues.....	53
7205	Inadequate or Inappropriate Care.....	54
7210	Pressure Sores	55
7215	Abuse	57
7220	Inadequate Staffing	60
7225	Lost/Stolen Items	62
7230	Refusal to Re-admit Following Hospitalization	64
7235	Hydration, Nutrition and Unintended Weight Loss.....	66
7240	Food Temperatures	68
7245	Hot Water Problems.....	70
7250	Leaking Roof	72
7255	Blocked or Failed Sewage System.....	73
7260	Lack of Heat.....	75
7265	Lack of Activities.....	76

APPENDIX

A Citizen's Guide to Filing a Complaint (BHS-OPS-700)	A
Website (BHS): http://www.michigan.gov/bhs [Complaints]	
Complaint Process	B
Website (BHS): http://www.michigan.gov/bhs [Complaints]	
Facility Incident Report Form (BHS-OPS-362)	C
Website (BHS): http://www.michigan.gov/bhs [Complaints, Health Facility Complaints]	
Nursing Home Complaint Form (BHS-OPS-361a)	D
Website (BHS): http://www.michigan.gov/bhs [Complaints]	
Resident Assistance Form (Example and Instructions for Facilities)	E
Website (BHS): http://www.michigan.gov/bhs [Forms]	
Resident/Patient Care Complaint Form (BHS-OPS-361)	F
Website (BHS): http://www.michigan.gov/bhs [Complaints]	

REFERENCES

Bureau of Health Systems' Website: <http://www.michigan.gov/bhs>

[Alerts and Program Clarifications](#)

Website (BHS): <http://www.michigan.gov/bhs>, [Spotlight]

[Best Practice Information](#) (Clinical Guidelines)

Website (BHS): <http://www.michigan.gov/bhs>, [Spotlight]

Decision Making Tool: Components of Immediate Jeopardy and Substandard Quality of Care

[Criminal History Background Checks for Nursing Homes and Homes for the Aged](#)

Website (BHS): <http://www.michigan.gov/bhs>, [Publications]

[Guidelines to Support Management of Complaints](#) (CMS S&C 04-09, 11/12/03)

Website (CMS): <http://www.cms.gov/medicaid/survey-cert/>

[Nursing Home Laws and Regulations](#)

Website (BHS): <http://www.michigan.gov/bhs>, [Spotlight]

[Nursing Home Resident Complaint Resolution Overview](#)

Website (BHS): <http://www.michigan.gov/bhs> [Health Care Facilities, Nursing Homes Hospital & Long Term Care Units, Complaints & Enforcement]

CHAPTER 1

INTRODUCTION

1000. INTRODUCTION

The Bureau of Health Systems (hereafter referred to as “Bureau or BHS”) is responsible for assuring that residents* in health care facilities receive the highest quality care possible and that they are protected on a continuous basis from acts of abuse, neglect, or misappropriation of personal property or funds. The Bureau conducts a wide variety of activities to meet these responsibilities, including periodic surveys of health care facilities that check for compliance with all requirements and complaint investigations that are focused on specific areas of compliance and occur at any time.

Facility residents, their representatives, or any other persons have the right to file complaints about violations of state or federal requirements. Nursing homes are required to have processes for receipt, investigation and resolution of complaints presented to them. Nursing homes also have specific responsibilities to investigate and report to the Bureau incidents of abuse, neglect, or misappropriation occurring in their homes; such reports are referred to in this manual as “facility reported incidents”.

The Bureau is responsible for investigating complaints and facility reported incidents; for determining whether or not violations of law occurred; for enforcing the law; and for reporting findings to the Department of Attorney General for possible further criminal or civil court action. Findings regarding licensed health care professionals are reported to the Michigan Department of Community Health (MDCH), Bureau of Health Professions for possible licensure action.

Chapter 2 of this manual contains an overview of the regulatory programs for health care facilities.

Chapter 3 contains the detailed legal requirements placed upon the Bureau and facilities, definitions of terms and Bureau policies regarding implementation of certain provisions.

Chapter 4 contains the process for filing of complaints with the Bureau.

Chapter 5 contains the nursing home responsibilities regarding complaints and abuse, neglect and misappropriation of property.

Chapter 6 contains the Bureau procedures that are followed for consumer complaints and facility reported incidents.

Chapter 7 contains the investigative processes used by the Bureau, including those for specific issues that are frequently contained in complaint investigations.

Direct any comments about this manual to the Complaint Investigation Unit at 517 241-4712.

* The term “resident” is used throughout this manual. In acute care settings the term “patient” is usually used instead.

CHAPTER 2 REGULATORY BACKGROUND

2100. LICENSING AND CERTIFICATION REQUIREMENTS FOR HEALTH CARE FACILITIES AND OTHER AGENCIES

The State of Michigan and the federal government have enacted specific minimum standards for the operation of certain health care facilities in Michigan. State standards are found in Article 17 of the *Michigan Public Health Code* and administrative rules enacted under the Code. State standards must be met in order to obtain and keep a license to operate the facility. Federal standards are also imposed on those facilities that choose to participate in the Medicare and/or Medicaid programs. The Bureau regulates the following facilities and agencies that are required to be licensed in Michigan and required to meet certification standards if they participate in Medicare and/or Medicaid:

- Nursing homes (including county medical care facilities and hospital long-term care units)
- Hospitals and psychiatric facilities
- Hospices and hospice residences
- Freestanding surgical outpatient facilities and ambulatory surgery centers
- Clinical laboratories

The Bureau also regulates the following facilities that are not required to be licensed in Michigan but are required to meet certification standards if they participate in Medicare and/or Medicaid:

- Home health agencies
- End-stage renal disease (kidney dialysis) facilities
- Outpatient rehabilitation facilities
- Portable x-ray providers
- End-stage renal dialysis facilities
- Rural health clinics

(Homes for the Aged are regulated by the Family Independence Agency.)

Part of Michigan's licensure laws establish a *Resident Bill of Rights* which is found in Section 20201 of the *Public Health Code*.

Any person may ask whether a provider is currently licensed, or obtain a copy of the most recent survey report of a specific licensed facility by writing to the Michigan Department of Community Health, Bureau of Health Systems, P.O. Box 30664, Lansing, Michigan 48909.

A person may also obtain a copy of licensure rules or certification requirements for any facility type by writing to the above address. Licensure rules are also available on the Internet through the Bureau of Health Systems' website, <http://www.michigan.gov/bhs>, Nursing Homes, LTC Units. Federal regulations for Medicare or Medicaid certified facilities are available at the Centers for Medicare and Medicaid Services (CMS) website at <http://cms.hhs.gov/>, *Regulations*.

2200. OTHER AGENCIES INVOLVED IN HEALTH FACILITY OVERSIGHT

- Michigan Department of Community Health, Bureau of Health Professions
This Agency is responsible for the licensure of physicians, nurses, pharmacists, and other health professionals, including nursing home administrators. Abuse and other unprofessional conduct attributed to such licensed professionals are referred to the Bureau of Health Professions for licensure review. It also certifies nurse aides and maintains a statewide registry of nurse aides. Nurse aides convicted of abuse are flagged on the registry and cannot be employed in any nursing home.
- Family Independence Agency
This Agency is responsible for the licensure of Homes for the Aged and Adult Foster Care homes. These homes provide supervised personal care that does not include nursing care. It receives and investigates complaints regarding these types of homes.
- Michigan Department of Labor & Economic Growth, Bureau of Construction Codes and Fire Safety
This agency conducts fire safety inspections in health facilities. Facilities must be in compliance with fire safety regulations in order to be licensed or certified by the Bureau of Health Systems.
- Michigan Department of Community Health, Office of Services to the Aging
This Agency coordinates with Area Agencies on Aging for service delivery to the elderly and houses the Long Term Care Ombudsman..
- Michigan Department of Community Health, Medical Services Administration
This is the Michigan Medicaid Program which funds all Medicaid programs, including the majority of long-term care in the State.
- Michigan Department of Attorney General, Health Care Fraud Division
This investigative program receives all complaints of abuse and neglect related to covered facilities and participates with the Michigan Department of Community Health in the investigation of select allegations. The Attorney General has the authority to initiate criminal prosecutions in certain cases of resident abuse.
- U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). CMS is the administrative entity for Medicare and Medicaid in accordance with the provisions of the Social Security Act.

CHAPTER 3

LEGAL REQUIREMENTS, DEFINITIONS AND BUREAU POLICIES

3000. PURPOSE

There are several state and federal requirements pertaining to the reporting and investigation of complaints, as well as specific requirements pertaining to facility reporting and Bureau investigation of alleged abuse, neglect and misappropriation of resident property.

This chapter presents the various state and federal legal requirements and defines terminology. Since the Bureau is responsible for implementation of both the state and federal requirements, this chapter presents the state and federal requirements, reviews and defines terms, and outlines certain Bureau policies that implement the requirements.

3100. LEGAL REQUIREMENTS RELATING TO COMPLAINTS

3110. Michigan Public Health Code (Public Act 368 of 1978, as amended)

Section 21723.

- (1) A nursing home shall post in an area accessible to residents, employees, and visitors the name, title, location, and telephone number of the individual in the nursing home who is responsible for receiving complaints and conducting complaint investigations and a procedure for communicating with that individual.
- (2) An individual responsible for receiving complaints and conducting complaint investigations in a nursing home shall be on duty and on site not less than 24 hours per day, 7 days a week.
- (3) The individual described in subsection (2) who receives a complaint, inquiry, or request from a nursing home resident or the resident's surrogate decision maker shall respond using the nursing home's established procedures pursuant to R 325.20113 of the Michigan Administrative Code.
- (4) To assist the individual described in subsection (2) in performing his or her duties, the department of consumer and industry services [now MDCH] shall post on its internet website all of the following information:
 - (a) Links to federal and state regulations and rules governing the nursing home industry.
 - (b) The scheduling of any training or joint training sessions concerning nursing home or elderly care issues being put on by the department of consumer and industry services [now MDCH].
 - (c) A list of long-term care contact phone numbers including, but not limited to, the consumer and industry services [now MDCH] complaint hotline, the consumer and industry services nursing home licensing division [now MDCH Division of Nursing Home Monitoring] , any commonly known nursing home provider groups, the state

long-term care ombudsman, and any commonly known nursing home resident care advocacy groups.

- (d) When it becomes available, information on the availability of electronic mail access to file a complaint concerning nursing home violations directly with the department of consumer and industry services [now MDCH].
 - (e) Any other information that the department of consumer and industry services [now MDCH] believes is helpful in responding to complaints, requests, and inquiries of a nursing home resident or his or her surrogate decision maker.
- (5) A nursing home receiving reimbursement pursuant to the medicaid program shall designate 1 or more current employees to fulfill the duties and responsibilities outlined in this section. This section does not constitute a basis for increasing nursing home staffing levels. As used in this subsection, "medicaid" means the program for medical assistance created under title XIX of the social security act, chapter 53, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to 1396r-6, and 1396r-8 to 1396v.

Section 21799a.

- (1) A person who believes that this part, a rule promulgated under this part, or a federal certification regulation applying to a nursing home may have been violated may request an investigation of a nursing home. The request shall be submitted to the department as a written complaint or the department shall assist the person in reducing an oral request to a written complaint within 7 days after the oral request is made.
- (2) The substance of the complaint shall be provided to the licensee no earlier than at the commencement of the on-site inspection of the nursing home which takes place pursuant to the complaint.
- (3) The complaint, a copy of the complaint, or a record published, released, or otherwise disclosed to the nursing home shall not disclose the name of the complainant or a patient named in the complaint unless the complainant or patient consents in writing to the disclosure or the investigation results in an administrative hearing or a judicial proceeding, or unless disclosure is considered essential to the investigation by the department. If disclosure is considered essential to the investigation, the complainant shall be given the opportunity to withdraw the complaint before disclosure.
- (4) Upon receipt of a complaint, the department shall determine, based on the allegations presented, whether this part, a rule promulgated under this part, or a federal certification regulation for nursing homes has been, is, or is in danger of being violated. The department shall investigate the complaint according to the urgency determined by the department. The initiation of a complaint investigation shall commence within 15 days after receipt of the written complaint by the department.
- (5) If, at any time, the department determines that this part, a rule promulgated under this part, or a federal certification regulation for nursing homes has been violated, the department shall list the violation and the provisions violated on the state and federal licensure and

certification forms for nursing homes. The violations shall be considered, as evidenced by a written explanation, by the department when it makes a licensure and certification decision or recommendation.

- (6) In all cases, the department shall inform the complainant of its findings unless otherwise indicated by the complainant. Within 30 days after the receipt of a complaint, the department shall provide the complainant a copy, if any, of the written determination, the correction notice, the warning notice, and the state licensure or federal certification form, or both, on which the violation is listed, or a status report indicating when these documents may be expected. The final report shall include a copy of the original complaint. The complainant may request additional copies of the documents listed in this subsection and shall reimburse the department for the copies in accord with established policies and procedures.
- (7) A written determination, correction notice, or warning notice concerning a complaint shall be available for public inspection, but the name of the complainant or patient shall not be disclosed without the complainant's or patient's consent.
- (8) A violation discovered as a result of the complaint investigation procedure shall be reported to persons administering sections 21799c to 21799e. The violation shall be assessed a penalty as described in this act.
- (9) A complainant who is dissatisfied with the determination or investigation by the department may request a hearing. A request for a hearing shall be submitted in writing to the director within 30 days after the mailing of the department's findings as described in subsection (6). Notice of the time and place of the hearing shall be sent to the complainant and the nursing home.

3120. Michigan Nursing Home Rules

R 325.20113. Adoption of written procedures to implement patient rights and responsibilities policy.

Rule 113.

- (1) A home shall adopt written policies and procedures to implement patient rights and responsibilities as provided by section 21765 of the Code. Before and following the patient's admission, such policy and procedures shall be available, upon request, to all the following:
 - (a) The patient.
 - (b) Attending physician.
 - (c) Next of kin.
 - (d) Member of the family.
 - (e) Guardian.
 - (f) Designated representative.
 - (g) Person or agency responsible for placing and maintaining the patient in the home.

- (h) Employees of the facility.
 - (i) Public.
- (2) The procedures shall include a procedure for the initiation, investigation, and resolution of complaints, subject to department approval, and, at a minimum, all of the following:
- (a) A statement that a patient may have the alternative to complain either to the home or the department about any condition, event, or procedure in the home without citing a specific violation of the code or these rules.
 - (b) A procedure for submitting written complaints to the home identifying potential violations of law or rule, including a procedure to assist a complainant in reducing an oral complaint to writing when such oral complaint is not resolved to the satisfaction of the complainant. If a standard form is used for complaints, a copy of the form shall be provided to each patient at the time of admission and additional forms shall be available on request.
 - (c) The name, title, location, and telephone number of the individual in the home who is responsible for receiving complaints and conducting complaint investigations and a procedure for communicating with that individual.
 - (d) A requirement that all complaints be investigated within 15 days following receipt of the complaint by the home, and a requirement that, within 30 days following receipt of the complaint, the home shall deliver to the complainant a written report of the results of the investigation or a written status report indicating when the report may be expected.
 - (e) A mechanism for appealing the matter to the administrator of the home if the complainant is not satisfied with the investigation or resolution of the complaint.
- (3) A home shall maintain for 3 years written complaints filed under its complaint procedure and all complaint investigation reports delivered to each complainant, and such records shall be available to the department upon request.

3130. CMS Long Term Care Requirements

42 CFR 483.13(f). Grievances

A resident has the right to:

- (1) Voice grievances without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished; and
- (2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

3200. LEGAL REQUIREMENTS RELATING TO ABUSE, NEGLECT AND MISAPPROPRIATION

3210. Michigan Public Health Code

Section 20173.

- (1) Except as otherwise provided in subsection (2), a health facility or agency that is a nursing home, county medical care facility, or home for the aged shall not employ, independently contract with, or grant clinical privileges to an individual who regularly provides direct services to patients or residents in the health facility or agency after the effective date of the amendatory act that added this section if the individual has been convicted of 1 or more of the following:
 - (a) A felony or an attempt or conspiracy to commit a felony within the 15 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract.
 - (b) A misdemeanor involving abuse, neglect, assault, battery, or criminal sexual conduct or involving fraud or theft against a vulnerable adult as that term is defined in section 145m of the Michigan penal code, 1931 PA 328, MCL 750.145m, or a state or federal crime that is substantially similar to a misdemeanor described in this subdivision, within the 10 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract.
- (2) Except as otherwise provided in this subsection and subsection (5), a health facility or agency that is a nursing home, county medical care facility, or home for the aged shall not employ, independently contract with, or grant privileges to an individual who regularly provides direct services to patients or residents in the health facility or agency after the effective date of the amendatory act that added this section until the health facility or agency complies with subsection (4) or (5), or both. This subsection and subsection (1) do not apply to an individual who is employed by, under independent contract to, or granted clinical privileges in a health facility or agency before the effective date of the amendatory act that added this section.
- (3) An individual who applies for employment either as an employee or as an independent contractor or for clinical privileges with a health facility or agency that is a nursing home, county medical care facility, or home for the aged and has received a good faith offer of employment, an independent contract, or clinical privileges from the health facility or agency shall give written consent at the time of application for the department of state police to conduct a criminal history check under subsection (4) or (5), or both, along with identification acceptable to the department of state police. If the department of state police has conducted a criminal history check on the applicant within the 24 months immediately preceding the date of application and the applicant provides written consent for the release of information for the purposes of this section, the health facility or agency may use a copy of the results of that criminal history check instead of obtaining written consent and requesting a new criminal history check under this subsection, and under subsections (4) and (5), or both. If the applicant is using a prior criminal history check as described in this

subsection, the health facility or agency shall accept the copy of the results of the criminal history check only from the health facility or agency or adult foster care facility that previously employed or granted clinical privileges to the applicant or from the firm or agency that independently contracts with the applicant.

- (4) Upon receipt of the written consent and identification required under subsection (3), if an applicant has resided in this state for 3 or more years preceding the good faith offer of employment, an independent contract, or clinical privileges, a health facility or agency that is a nursing home, county medical care facility, or home for the aged that has made a good faith offer of employment or an independent contract or clinical privileges to the applicant shall make a request to the department of state police to conduct a criminal history check on the applicant. The request shall be made in a manner prescribed by the department of state police. The health facility or agency shall make the written consent and identification available to the department of state police. If there is a charge for conducting the criminal history check, the health facility or agency requesting the criminal history check shall pay the cost of the charge. The health facility or agency shall not seek reimbursement for the charge from the individual who is the subject of the criminal history check. The department of state police shall conduct a criminal history check on the applicant named in the request. The department of state police shall provide the health facility or agency with a written report of the criminal history check conducted under this subsection. The report shall contain any criminal history record information on the applicant maintained by the department of state police. As a condition of employment, an applicant shall sign a written statement that he or she has been a resident of this state for 3 or more years preceding the good faith offer of employment, independent contract, or clinical privileges.
- (5) Upon receipt of the written consent and identification required under subsection (3), if an applicant has resided in this state for less than 3 years preceding the good faith offer of employment, an independent contract, or clinical privileges, a health facility or agency that is a nursing home, county medical care facility, or home for the aged that has made a good faith offer described in this subsection to the applicant shall comply with subsection (4) and shall make a request to the department of state police to forward the applicant's fingerprints to the federal bureau of investigation. The department of state police shall request the federal bureau of investigation to make a determination of the existence of any national criminal history pertaining to the applicant. An applicant described in this subsection shall provide the department of state police with 2 sets of fingerprints. The department of state police shall complete the criminal history check under subsection (4) and, except as otherwise provided in this subsection, provide the results of its determination under subsection (4) to the health facility or agency and the results of the federal bureau of investigation determination to the department of consumer and industry services [now MDCH] within 30 days after the request is made. If the requesting health facility or agency is not a state department or agency and if a crime is disclosed on the federal bureau of investigation determination, the department shall notify the health facility or agency in writing of the type of crime disclosed on the federal bureau of investigation determination without disclosing the details of the crime. Any charges for fingerprinting or a federal bureau of investigation determination under this subsection shall be paid in the manner required under subsection (4).

- (6) If a health facility or agency that is a nursing home, county medical care facility, or home for the aged determines it necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history check under subsection (4) or (5), or both, the health facility or agency may conditionally employ or grant conditional clinical privileges to the individual if all of the following apply:
- (a) The health facility or agency requests the criminal history check under subsection (4) or (5), or both, upon conditionally employing or conditionally granting clinical privileges to the individual.
 - (b) The individual signs a statement in writing that indicates all of the following:
 - (i) That he or she has not been convicted of 1 or more of the crimes that are described in subsection (1)(a) and (b) within the applicable time period prescribed by subsection (1)(a) and (b),
 - (ii) The individual agrees that, if the information in the criminal history check conducted under subsection (4) or (5), or both, does not confirm the individual's statement under subparagraph (i), his or her employment or clinical privileges will be terminated by the health facility or agency as required under subsection (1) unless and until the individual can prove that the information is incorrect. The health facility or agency shall provide a copy of the results of the criminal history check conducted under subsection (4) or (5), or both, to the applicant upon request.
 - (iii) That he or she understands the conditions described in subparagraphs (i) and (ii) that result in the termination of his or her employment or clinical privileges and that those conditions are good cause for termination.
- (7) On the effective date of the amendatory act that added this section, the department shall develop and distribute a model form for the statement required under subsection (6)(b). The department shall make the model form available to health facilities or agencies subject to this section upon request at no charge.
- (8) If an individual is employed as a conditional employee or is granted conditional clinical privileges under subsection (6), and the report described in subsection (4) or (5), or both, does not confirm the individual's statement under subsection (6)(b)(i), the health facility or agency shall terminate the individual's employment or clinical privileges as required by subsection (1).
- (9) An individual who knowingly provides false information regarding criminal convictions on a statement described in subsection (6)(b)(i) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both.
- (10) A health facility or agency that is a nursing home, county medical care facility, or home for the aged shall use criminal history record information obtained under subsection (4), (5), or (6) only for the purpose of evaluating an applicant's qualifications for employment, an independent contract, or clinical privileges in the position for which he or she has applied and for the purposes of subsections (6) and (8). A health facility or agency or an employee of the health facility or agency shall not disclose criminal history record information obtained under subsection (4) or (5) to a person who is not directly involved in evaluating

the applicant's qualifications for employment, an independent contract, or clinical privileges. Upon written request from another health facility or agency or adult foster care facility that is considering employing, independently contracting with, or granting clinical privileges to an individual, a health facility or agency that has obtained criminal history record information under this section on that individual shall share the information with the requesting health facility or agency or adult foster care facility. Except for a knowing or intentional release of false information, a health facility or agency has no liability in connection with a criminal background check conducted under this section or the release of criminal history record information under this subsection.

- (11) As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges shall agree in writing to report to the health facility or agency immediately upon being arrested for or convicted of 1 or more of the criminal offenses listed in subsection (1)(a) and (b).
- (12) As used in this section:
 - (a) "Adult foster care facility" means an adult foster care facility licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.
 - (b) "Independent contract" means a contract entered into by a health facility or agency with an individual who provides the contracted services independently or a contract entered into by a health facility or agency with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the health facility or agency on behalf of the organization or agency.

Section 21771.

- (1) A licensee, nursing home administrator, or employee of a nursing home shall not physically, mentally, or emotionally abuse, mistreat or harmfully neglect a patient.
- (2) A nursing home employee who becomes aware of an act prohibited by this section immediately shall report the matter to the nursing home administrator or nursing director. A nursing home administrator or nursing director who becomes aware of an act prohibited by this section immediately shall report the matter by telephone to the department of public health [now MDCH].
- (3) Any person may report a violation of this section to the department.
- (4) A physician or other licensed health care personnel of a hospital or other health care facility to which a patient is transferred who becomes aware of an act prohibited by this section shall report the act to the department.
- (5) Upon receipt of a report made under this section, the department shall make an investigation. The department may require the person making the report to submit a written report or to supply additional information, or both.

- (6) A licensee or nursing home administrator shall not evict, harass, dismiss, or retaliate against a patient, a patient's representative, or an employee who makes a report under this section.

3220. CMS Long Term Care Requirements

Federal regulations at 42 CFR 483 contain requirements for homes participating in Medicare and/or Medicaid:

CFR 483.13(b) Abuse. The resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

CFR 483.13(c) Staff treatment of residents. The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect and abuse of residents and misappropriation of resident property.

- (1) The facility must –
 - (i) Not use verbal, mental, sexual or physical abuse, corporal punishment, or involuntary seclusion;
 - (ii) Not employ individuals who have been –
 - (A) Found guilty of abusing, neglecting, or mistreating residents by a court of law; or
 - (B) Have a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property; and
 - (iii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State nurse aide registry or licensing authorities.
- (2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency).
- (3) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.
- (4) The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

3230. Michigan Adult Protective Services Act

In addition to the state licensure and federal requirements shown above, the Adult Protective Services Act, 1982 PA 519, requires health professionals and employees of health care facilities to report any incident of suspected abuse, neglect, or misappropriation of a patient or resident.

Any facility or facility employee who suspects or has reasonable cause to believe that an adult has been subjected to abuse, neglect, or misappropriation as defined by the Adult Protective Services Act, must make a report to the Family Independence Agency or County Department of Social Services.

3300. DEFINITIONS OF ABUSE, NEGLECT, AND MISAPPROPRIATION AND RELATED TERMS

There is a variety of similar, but not identical, terms used in state laws and federal regulations related to abuse, neglect, and misappropriation. This section discusses these terms and sets forth definitions that meet the intent of these multiple legal bases.

The Public Health Code, Section 21771(1) states, “A licensee, nursing home administrator, or employee of a nursing home shall not physically, mentally, or emotionally abuse, mistreat, or harmfully neglect a patient.” The key terms here are *abuse*, *mistreat*, and *harmfully neglect*. Also of interest are the adjectives *mentally* and *emotionally* used in regard to abuse.

42 CFR 483.13(c)(2) states “The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source and misappropriation of resident property...”. The key terms here are *mistreatment*, *neglect*, *abuse* and *misappropriation of resident property*.

Following are consolidated definitions of these terms that are used by the Bureau for purposes of this manual.

3310. Abuse

Abuse means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. The source of this definition is 42 CFR 488.301. The Public Health Code does not define the terms used in 21771(1), so the federal definition is adopted for both state and federal purposes.

It is noted that abuse involves a willful, purposive and assertive action as opposed to a negligent action, accidental action, or lack of action. Abuse includes verbal, physical, sexual or mental abuse, corporal punishment and involuntary seclusion, as further defined below. There is a presumption that all instances of abuse of residents, even those in a coma, cause some degree of physical harm, or pain or mental anguish.

3311. Physical Abuse

- Physical abuse includes hitting, slapping, pinching, kicking, etc. It also includes controlling behavior through corporal punishment.

In general, there is a presumption that physical abuse has occurred whenever there has been some type of impermissible or unjustifiable physical contact with a resident which has resulted in injury or harm to the resident. A resident has been physically abused if **all** of the following conditions are satisfied:

- ▶ An individual makes or causes physical contact with the resident in question, either through direct bodily contact or through the use of some object,
- ▶ The individual in question brings about this physical contact with the resident either intentionally or through carelessness,
- ▶ The physical contact in question results, or is likely to result, in death, physical injury, or pain to the resident in question, and
- ▶ The physical contact in question cannot reasonably be justified under any of the exceptions set forth in paragraph below on permissible physical contact.

- Examples of Physical Abuse

The types of physical contact that may constitute physical abuse include, but are not limited to the following:

- ▶ Striking the resident by using a part of the body, such as hitting, slapping, beating, punching, kicking, pushing, shoving or spitting.
- ▶ Striking the resident through the use of an object (i.e., towel, rolled newspaper, shoe).
- ▶ Pulling or tugging on any part of the resident's body.
- ▶ Twisting any part of the resident's body.
- ▶ Squeezing or pinching any part of the resident's body.
- ▶ Digging into any part of the resident's body with fingers or nails.
- ▶ Burning the resident or resident with objects such as matches or cigarettes.
- ▶ Prodding, poking or sticking the resident with objects such as needles, pins, pencils, pens, eating utensils, or electrical devices.

- Permissible Physical Contact

There are only three types of situations in which physical contact which results, or is likely to result, in harm to a resident does not constitute physical abuse. They are:

- ▶ When the physical contact in question occurs in the course of carrying out a prescribed form of treatment or therapy to which the resident has consented and both the type of contact involved and the amount of force used are reasonable and necessary in order to carry out that prescribed form of treatment or therapy; or
- ▶ When the physical contact in question occurs in the course of providing care, comfort or assistance to which the resident has consented and both the type of contact and the amount of force used are absolutely necessary in order to provide care, comfort or assistance to that resident; or

- ▶ When the physical contact in question occurs in the course of attempting to restrain a resident's behavior in an emergency and both the type of contact involved and the amount of force used are reasonably necessary in order to prevent that resident from injuring himself/herself, injuring another person or damaging property.

3312. Mental or Emotional Abuse

- Mental or emotional abuse includes, but is not limited to, humiliation, harassment, and threats of punishment or deprivation.

Verbal abuse is a primary means of mental or emotional abuse. It involves the use of oral, written or gestured language that includes disparaging and derogatory terms to residents or their families, or within their hearing distance, to describe residents, regardless of their age, ability to comprehend, or disability. Please note that although verbal abuse is not specifically mentioned in Section 21771(1), the terms *mentally* and *emotionally* are intended to include verbal abuse as a type of abuse.

There is no fixed rule on when an interaction between an individual and a resident is serious enough to warrant a finding of mental or emotional abuse. Even minimal psychological harm may be enough; the answer depends on the circumstances of the individual case. However, the following factual situations provide a reasonable basis for concluding that mental or emotional abuse has occurred:

- ▶ The interaction coerces or intimidates the resident into surrendering his or her money or personal belongings; or
 - ▶ The interaction subjects the resident to scorn, ridicule or humiliation; or
 - ▶ The interaction produces a noticeable level of fear, anxiety, agitation, withdrawal or other emotional distress in the resident that is not otherwise explainable; or
 - ▶ The interaction involves a threat of physical harm, punishment, or deprivation.
- Examples of Mental or Emotional Abuse:
 - ▶ Facility policy, without just cause, prohibits residents from smoking.
 - ▶ An employee taunts or teases a resident or says things to frighten a resident, such as telling a resident that he/she will never be able to see his/her family again.
 - ▶ A combative resident threatens to beat up another resident.
 - ▶ Involuntary seclusion – i.e., the separation of a resident from other residents or from his or her room against the resident's will, or the will of the resident's legal representative. Temporary monitored separation from other residents will not be considered involuntary seclusion and may be permitted if reasonably used as a therapeutic intervention to reduce agitation as determined by professional staff and consistent with the resident's plan of care.

3313. Involuntary Seclusion

Involuntary seclusion is a type of mental or emotional abuse that involves separation of a resident from other residents or from his or her room against the resident's will, or the will of the resident's legal representative. Emergency or short term monitored separation from other residents are not

considered involuntary seclusion and are permitted if used for a limited period of time as a therapeutic intervention to reduce agitation until professional staff can develop a plan of care to meet the resident's needs.

3314. Sexual Abuse

Sexual abuse includes, but is not limited to, sexual harassment, sexual coercion, or sexual assault.

- Examples of Sexual Abuse:
 - ▶ An employee sexually molests a resident. (For example, non-consensual touching of private body parts or forcing the resident to commit a sexual act.)
 - ▶ A resident forcefully requires another resident to participate in a sexual act.
- Possible Sexual Abuse:
 - ▶ A resident returns from an at-home leave, reporting being sexually molested.

3320. Neglect

Neglect means failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. The source of this definition is 42 CFR 488.301. The Public Health Code does not define the term *harmfully neglect* used in 21771(1). By definition, neglect is harmful, so the federal definition is adopted for both state and federal purposes.

Please note that by definition a particular event is either abuse or neglect, not both.

Basically, neglect involves the failure of a staff person to carry out his/her duties in regard to a resident. In theory, any failure to provide required services of any kind for any reason could be considered neglect. However, citations for neglect are normally issued only in cases where there is significant actual harm resulting from a failure to act in the presence of the knowledge of what should be done and the capability to provide the required services. Such cases may include a failure to follow a standard of practice. Even if neglect is not cited, citations are issued against the facility for the specific care issues involved.

There is a presumption that neglect has occurred whenever a facility or individual fails to provide a treatment or service to a resident which is necessary for a resident's health or safety, and the failure to provide that treatment or service results in a deterioration of the resident's physical, mental or emotional condition.

- A resident has been neglected whenever all of the following conditions are satisfied:
 - ▶ The facility fails to provide or arrange for medical, dental, nursing, dietary, physical therapy, pharmacy, habilitation, psychological, speech, audiological or other treatments or services to the resident in question; and
 - ▶ The facility's failure to provide these treatments or services is either intentional or the result of carelessness; and
 - ▶ The failure to provide these treatments or services, results in a deterioration of the resident's physical, mental or emotional condition.

- Examples of Neglect:
The following actions or omissions constitute neglect whenever they result in a noticeable deterioration of the resident's physical, mental or emotional condition:
 - ▶ Failure to carry out a physician's order for treatment, therapy, diagnostic testing, distribution of medications, etc.
 - ▶ Failure to carry out nursing, treatment or individual resident care plans.
 - ▶ Failure to notify a resident's attending physician and other responsible persons in the event of an incident involving that resident.
 - ▶ Failure to notify a resident's attending physician and other responsible persons in the event of a significant change in that resident's physical, mental or emotional condition.
 - ▶ Failure to provide an adequate number of nutritionally balanced, properly prepared and medically appropriate meals.
 - ▶ Failure to adequately supervise the whereabouts and/or activities of a resident.
 - ▶ Failure to take precautionary measures that have been ordered and which are reasonably necessary to protect the health or safety of a resident.
 - ▶ Refusal or failure to provide any service to the resident for the purpose of punishing, disciplining or retaliation.
 - ▶ Allowing the physical environment to deteriorate to the point that residents or residents are subject to hazardous situations such as electrical, water or structural hazards.
 - ▶ Leaving a resident lying in feces or urine soaked linens for an extended period of time.
 - ▶ Leaving a resident restrained in other than an immediate emergency, without a physician's order, solely for an employee's own convenience.

- Neglect Exceptions:
 - ▶ No resident can be considered neglected for the sole reason that he or she relies on or is being furnished treatment in accordance with the tenets and teachings of a well-recognized church or denomination by a duly-accredited practitioner thereof.
 - ▶ No resident should be considered neglected because they have knowingly refused a treatment or service.

3330. Misappropriation

Misappropriation of resident property means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent. The source of this definition is 42 CFR 488.301. The Public Health Code does not mention misappropriation, so this definition applies for federal purposes only. It is noted that the term *exploitation* used in some laws or regulations is synonymous with *misappropriation*. In criminal law, misappropriation might be considered theft, embezzlement, fraud or a variety of other offenses.

- Examples of Misappropriation:
 - ▶ The facility combines money from resident trust funds with facility funds for facility use.

- ▶ A business office employee uses money from residents trust funds for purposes not authorized by the residents.
- ▶ A representative payee receives a Social Security check and does not use the funds for the benefit of the Social Security beneficiary.
- ▶ A resident steals jewelry from another resident.
- ▶ A court appointed guardian or conservator uses the resident's money for personal gain rather than spending the money for the resident's benefit.
- ▶ The daughter/son of a resident sells off the resident's assets without the resident's knowledge.
- ▶ Theft by facility staff of resident's personal items/money.

3340. Mistreatment

Mistreat is used in Section 21771(1) and *mistreatment* in 42 CFR 483.13(c)(2), but neither defines these terms. In the discussion of the synonyms *abuse*, *misuse*, *mistreat*, *ill-treat*, and *maltreat*, the American Collegiate Dictionary indicates that all of these verbs mean to treat a person or thing wrongfully or harmfully. It states that *mistreat* may imply only negligence or lack of knowledge on the offender's part, but more often refers to harm inflicted deliberately. In consultation with CMS, we have received informal advice to avoid trying to apply the concept of mistreatment because of its ambiguous definition. Therefore, Bureau surveyors will not use the term "mistreatment" in documentation of citations for violations of either Section 21771(1) or 42 CFR 483.13(c)(2) – Tag F225.

3400. BUREAU POLICIES REGARDING IMPLEMENTATION OF THE STATE AND FEDERAL REQUIREMENTS REGARDING ABUSE, NEGLECT, AND MISAPPROPRIATION

The intent of both the Michigan and federal requirements is to identify and take immediate actions to prevent any further abuse, neglect, and misappropriation. However, there are some differences that are noted and discussed below:

3410. Requirement for "Immediate" Reporting

Section 21771 requires *immediate* reporting when the facility becomes *aware of a prohibited act*. The federal requirement requires reporting *alleged* violations. In both cases the facility must first screen incidents, observations, and other problematic or unusual events reported by employees to determine if they potentially involve any alleged acts, which could meet the definition of abuse if they were substantiated. The facility must investigate the alleged act or incident. The facility must make a preliminary judgment regarding the likely credibility of a reported incident; i.e., abuse, neglect, or misappropriation and immediately report abuse, neglect, or misappropriation. Only reports that meet these tests need to be reported. However, credible reports of other types of incidents may need to be investigated by the facility for purposes of compliance with other requirements.

3420. Facility Responsibility to Investigate and Prevent Further Abuse

The federal regulation requires the facility to thoroughly investigate alleged abuse, to prevent further abuse while the investigation is in progress, and to report the results of the investigation to the State in accordance with State law within 5 working days.

In contrast, Section 21771 lacks a specific requirement for the facility to do its own investigation and prevent further abuse. The Bureau believes that the higher federal requirements for a facility to immediately do its own investigation, prevent further abuse and report its investigation within 5 days prevail. Section 5253 adds a requirement that certain events be reported to MDCH within 24 hours, regardless of whether the facility investigation is completed.

3430. Employee vs. Non-employee Abuse, Neglect, or Misappropriation

CMS Tag F223 gives residents the right to be free of abuse by any person, staff member or not. In contrast, Section 21771 is limited to abuse by staff members. Abuse by non-staff members such as other residents and visitors can be equally harmful. The State Adult Protective Services Act prohibits abuse regardless of the setting and the classification of the abuser. Section 6200 includes the requirements for the reporting and investigation of abuse in a facility by non-staff members consistent with the Adult Protective Services Act.

3440. Facility Culpability

The state has an interest in protecting residents and residents from abuse, neglect, or misappropriation no matter who is responsible for the harm. Therefore, all reports of suspected abuse, neglect, or misappropriation involving residents are investigated. The Bureau decides whether or not the facility is culpable and will be cited appropriately.

3441. Involvement of Facility Employees or Agents

For purposes of state law, a facility is responsible for its employees and agents regardless of any prior notice or apprehension of a potential problem. A citation will be issued under federal law if a facility does not comply with any criteria of State Operations Manual, Appendix P, Task 5G on Abuse Prohibition. See also Section 5210.

3442. Involvement of Non-Employees

A facility is responsible for protecting a resident from non-employees such as other residents, family members, and general visitors whenever it had or should have reasonably had, an apprehension or warning of the potential problem. In such cases, the facility will be considered culpable and cited.

If the facility could not reasonably have known of the potential problem, the facility is not cited. However, the matter is referred to the Family Independence Agency, Adult Protective Services Unit or state or local criminal authorities if appropriate.

- Examples of this would include:
 - ▶ A son/daughter slaps his/her mother or father while visiting them at the facility.
 - ▶ A resident picks a fight with another resident and knocks him down.
 - ▶ A resident's spouse threatens to prevent them from having any visitors in retaliation for something they did or said.
 - ▶ A visitor in the facility uses demeaning language to ridicule a resident.
 - ▶ A resident returns to the facility with bruises after an at-home leave of absence.

CHAPTER 4

COMPLAINTS INVOLVING HEALTH FACILITIES

4100. RIGHT TO FILE A COMPLAINT

Any person who believes that a health facility or agency has violated a state licensure law or rule, or a federal certification requirement may file a complaint with the Bureau of Health Systems.

- The Bureau is responsible for investigating complaints against the following facility types:
 - ▶ Nursing homes (including county medical care facilities and hospital long-term care units)
 - ▶ Hospitals and psychiatric facilities
 - ▶ Hospices and hospice residences
 - ▶ Home health agencies
 - ▶ Outpatient rehabilitation facilities
 - ▶ Portable x-ray providers
 - ▶ Freestanding surgical outpatient facilities and ambulatory surgery centers
 - ▶ End-stage renal dialysis facilities
 - ▶ Rural health clinics
 - ▶ Clinical laboratories
- Complaints against the following types of facilities should be filed with the indicated agencies:
 - ▶ Homes for the Aged – Family Independence Agency, 1-866-856-0126
 - ▶ Adult foster care homes – Family Independence Agency, 517-373-8580
 - ▶ Individual licensed health care professionals – Bureau of Health Professions, 517-373-9196

4200. CONTENT OF COMPLAINT

- A complaint must include:
 - ▶ The name and address of the facility or agency
 - ▶ The resident name, if applicable
 - ▶ The nature of the complaint and the dates of any specific events
 - ▶ The complainant's name, address and telephone number.

4300. ANONYMOUS COMPLAINTS

The Bureau may investigate anonymous complaints that lack the complainant's name, address and telephone number. However, such complaints are often more difficult to thoroughly investigate and substantiate because of the inability to contact the complainant for additional information, and, of course, the Bureau is unable to report its findings to the complainant. Priority will be given to credible allegations of harm.

4400. CONFIDENTIALITY OF COMPLAINANT'S NAME FOR COMPLAINTS INVOLVING NURSING HOMES (including County Medical Care Facilities)

Section 21799a of the Public Health Code provides that a complaint, a copy of the complaint, or a record published, released, or otherwise disclosed to the nursing home shall not disclose the name of the complainant or a resident named in the complaint unless:

- The complainant or resident consents in writing to the disclosure, or
- The investigation results in an administrative hearing or a judicial proceeding, or
- The Bureau considers disclosure essential to the investigation.

If disclosure is considered essential to the investigation, the complainant is given the opportunity to withdraw the complaint before disclosure. Section 21799a also provides that the substance (but not a copy) of the complaint must be provided to the facility no earlier than the start of the on-site inspection of the facility that takes place pursuant to the complaint.

In addition, Section 21743(1)(d) of the Code provides that a complaint or complaint investigation report shall not be disclosed by the Bureau to a person other than the complainant or complainant's representative before it is disclosed to the nursing home.

4500. CONFIDENTIALITY OF COMPLAINANT'S NAME FOR COMPLAINTS INVOLVING OTHER CLASSES OF HEALTH CARE FACILITIES

Section 20176 of the Public Health Code provides that, except for complaints involving nursing homes, the name of the complainant and the charges contained in the complaint are a matter of public record. This means that the Department cannot keep this information confidential if requested by a member of the public or a facility.

4600. TIME LIMIT FOR FILING NURSING HOME COMPLAINTS

Nursing Home and Nursing Facility Rule R325.20114(1)(a)(b) specifies that a complaint against a nursing home must be filed:

- Within 12 months of the alleged violation, or
- If a complaint has first been filed with a nursing home, within 12 months of the determination of the nursing home.

4700. METHODS FOR FILING COMPLAINTS

- Telephone:
The Department operates a toll free complaint hotline that may be reached from anywhere in the United States and Canada by dialing 1-800-882-6006 anytime. Business hours for the hotline are from 8 a.m. to 5 p.m. Monday through Friday. A voice mail system is available to record calls at other hours. Calls received outside of business hours are returned the next business day. The [Resident/Patient Care Complaint](#) form (Appendix F) or the [Nursing Home Complaint Form](#) (Appendix D) is available on request from the Complaint Investigation Unit at 517 241-4712

- Mail:
Written complaints should be mailed to the Michigan Department of Community Health, BHS, Complaint Investigation Unit, P.O. Box 30664, Lansing, MI 48909.
- Fax:
Complaints may also be faxed to the Complaint Investigation Unit at 517 241-0093.
- Internet:
Complaints may be filed online via the Internet through the Bureau website <http://www.michigan.gov/bhs>, [Complaints]. The pamphlet, [*A Citizen's Guide to Filing A Complaint*](#) (Appendix A), is also posted on the website.
- Referrals:
Complaints from other agencies may be accepted provided the referral contains the information prescribed in Section 4200 and provided the complainant confirms the complaint should be accepted.

4800. FREEDOM FROM RETALIATION

Sections 20201(4) and 21771(6) provide that a nursing home shall not discharge, harass, retaliate or discriminate against a resident because the resident has exercised his or her rights under the Public Health Code. Violations are referred to the Complaint Investigation Unit.

4900. ACKNOWLEDGMENT OF COMPLAINTS

When the Bureau receives a complaint, it will send an acknowledgment to the complainant with the assigned complaint number and the organizational unit that will be responsible for the investigation.

Please refer to Chapter 6 and Appendix B for Bureau processing, investigation and reporting of complaint findings.

CHAPTER 5

NURSING HOME RESPONSIBILITIES REGARDING COMPLAINTS AND ABUSE, NEGLECT AND MISAPPROPRIATION

5000. PURPOSE

Effective protection of residents in long term care facilities from abuse, neglect, or misappropriation requires a joint effort by the Bureau, long term care providers and concerned citizens. We wish to encourage reasonable and appropriate facility responses to actual or potential cases of resident abuse, neglect, or misappropriation. We also wish to promote facility efforts to prevent resident abuse, neglect, or misappropriation from occurring.

This chapter identifies the specific steps that long-term care facilities must take in response to actual and potential resident abuse, neglect, or misappropriation situations. It also provides facilities with specific recommendations on steps, which can be undertaken to minimize the occurrence of resident abuse, neglect, or misappropriation in the first place. Finally, it presents the requirements placed on the nursing home for reporting, investigation, and protective and corrective actions.

5100. COMPLAINT PROCESS REQUIREMENTS

Michigan Compiled Law MCL 333.21723 and Nursing Home and Nursing Care Facilities' Rule 325.20113 require a nursing home to adopt a written patient rights and responsibilities policy that includes the creation of a procedure for filing complaints by nursing home residents and other interested parties. Nursing home procedures must include a procedure for the initiation, investigation and resolution of complaints subject to Departmental approval. The information below has been developed to assist nursing homes and is based on the statutory requirements and departmental recommendations. Nursing homes may adopt this procedure or initiate their own procedure that includes the minimum statutory requirements.

- *Designate* a facility staff person on each shift to be responsible for receiving complaints and conducting complaint investigations. The facility must ensure that an individual **is on duty and on site not less than 24 hours per day, 7 days a week** for this purpose. The designated staff person must be clearly identified for residents and family members. It is recommended that the facility establish a monthly schedule showing the designated individual for each shift on each day of the month.
- *Establish* a procedure for submission and resolution of in-house written or oral complaints to include the following:
 - ▶ A facility process for the receipt of complaints in person, by telephone, or in writing by residents, employees and visitors. The facility should assist residents in reducing their oral complaint to writing when such oral complaint is not resolved to the satisfaction of the complainant. The [*Resident Assistance Form*](#) (Appendix E) with instructions may be used for this purpose. A facility may create its own form provided it meets the requirements of MCL 333.21723 and R 325.20113.

- ▶ A timeframe that is responsive to the complainant as well as the 15-day investigation requirement set forth in R 325.20113(2)(d). MDCH recommends the following timeframes from receipt of complaint to initiation of investigation:
- ▶ **Immediately (no later than 8 hours)** – for abuse, neglect or misappropriation.
- ▶ **As Soon As Possible but Within five (5) Days** – for anything that has caused actual harm.
- ▶ **As Soon As Possible but Within 15 Days** – for any other concern.
- ▶ A process for delivering to the complainant a written report of the results of the investigation as soon as possible after investigation or within 30 days following receipt of the complaint, or a written status report indicating when the report may be expected.
- ▶ A mechanism for appealing the matter to the administrator of the home if the complainant is not satisfied with the investigation or resolution of the complaint.
- ▶ A process for informing a resident or other interested party that they may contact the Michigan Department of Community Health to file a complaint as an alternative, if not satisfied with the results of the appeal to the nursing home administrator.
- ▶ Maintaining written complaints filed under its complaint procedure and all complaint investigation reports given to each complainant for three years, and making records available to the Michigan Department of Community Health upon request. Investigation reports should include the resolution of the complaint.
- ▶ A process for following up with the resident to determine if the complaint was resolved to resident's satisfaction.
- ▶ A process for utilizing the findings of the complaint investigation as part of a facility Quality Improvement Program.

Caution: The procedure described above is in addition to abuse, neglect and misappropriation investigation and reporting required by Public Act 368 of 1978, Section 21771 and the Code of Federal Regulations, 42 CFR 483.13(c)(12). Facilities are responsible for meeting the MDCH reporting requirements for abuse, neglect and misappropriation as set forth in statute.

- *Post* the following information in an area accessible to residents, employees, and visitors:
 - ▶ The name, title, location, and telephone number of the individuals in the nursing home who are responsible for receiving complaints and conducting complaint investigations. It is recommended that the monthly schedule developed in Step 1 be posted to meet this requirement.
 - ▶ A procedure for communicating with that individual. This should be a summary of the process described in 2.A of this procedure and should include the [*Resident Assistance Form*](#) (Appendix E) or its equivalent.
- *Make available* to all of the parties listed below, upon admission and upon request, the facility's complaint policy and procedure.
 - ▶ The resident.
 - ▶ Attending physician.

- ▶ Next of kin.
- ▶ Member of the family.
- ▶ Guardian.
- ▶ Designated representative.
- ▶ Person or agency responsible for placing and maintaining the resident in the home.
- ▶ Employees of the facility.
- ▶ Public.

5200. ABUSE, NEGLECT AND MISAPPROPRIATION REQUIREMENTS

This section contains facility requirements for the prevention of abuse, neglect and misappropriation and for the reporting of incidents that may occur.

5210. Written Policies and Procedures

Appendix P of the CMS State Operations Manual contains the protocol for nursing home surveys. Task 5G Abuse Prevention Review requires surveyors to review facility policies and procedures for:

- *Screening* of potential employees
- *Training* of employees (both for new employees, and ongoing training for all employees)
- *Prevention* policies and procedures
- *Identification* of possible incidents or allegations that need investigation;
- *Investigation* of incidents and allegations
- *Protection* of residents during investigations
- *Reporting* of incidents, investigations, and facility response to the results of their investigations

5211. Screening of Potential Employees

Michigan Public Act 303 of 2002 added Section 20173 to the Public Health Code effective May 10, 2002. Section 20173 requires pre-employment criminal history checks for individuals regularly providing direct services to residents in nursing homes and county medical care facilities. A facility is not required by F225 or 42 CFR 483.13(c)(1)(ii) and (iii) to perform a criminal background check prior to employment; however, the state law prevails.

The federal requirements state that a certified long term care facility must not employ an individual who has been found guilty of abusing, neglecting or mistreating residents by a court of law; or who has had a finding entered into the State Nurse Aide Registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property. The facility must report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other facility staff to the State Nurse Aide Registry or licensing authorities. These reports may be made to the Bureau of Health Professions, Complaint and Allegation Division, P.O. Box 30670, Lansing, MI 48909, or by calling (517) 373-9196.

In addition, a facility must maintain documentation that it has inquired from the State Nurse Aide

Registry or licensing authorities about the individual they wish to hire. If a facility receives information that an applicant for employment or an employee has been found guilty of abuse, neglect or mistreating residents by a court of law it must report the individual to the State Nurse Aide Registry or licensing authorities.

5212. Reporting

Each long-term care facility should adopt and implement written policies and procedures for reporting and responding to incidents of suspected resident abuse, neglect, or misappropriation. At a minimum, these policies and procedures should ensure that:

- All incidents are reported to the facility administration.
- All incidents of suspected resident abuse, neglect, or misappropriation are reported to the Bureau for investigation as outlined in this part.
- Any and all available information that may be relevant to an investigation of any case of suspected resident abuse, neglect, or misappropriation is made available to the Bureau upon request.
- Reasonable efforts are made to facilitate Bureau attempts to interview any and all potential witnesses who may have information that is relevant to the issues involved in the investigation.

5220. Abuse Prevention Program

In order to prevent abuse, neglect, or misappropriation to the maximum extent possible, each long-term care facility should provide supervision of staff and residents, regular orientation, and in-service training programs for all facility personnel that emphasize the following:

- Techniques for management of difficult residents.
- Identification of factors that contribute to, or escalate, hostile behavior.
- Assessment of personnel responses to aggressive or hostile behavior.
- Identification of employee and resident coping behaviors, and reinforcement of positive and adaptive behaviors.
- Use of intervention techniques, including verbal responses and safe, non-injurious physical control techniques, as therapeutic tools for hostile residents.
- Close observation of new employees during orientation.
- Interdisciplinary program planning for residents.

5230. Adoption and Implementation of Preventative Administrative Policies

In addition to the specific abuse prevention program requirements described in Section 5220, facilities should adopt and implement administrative, management, and personnel policies and practices that include:

- Careful interviewing of employee applicants and verification of employee competency and credentials.
- Close examination of applicant references prior to hiring.
- Cooperation with other facilities in providing information about an employee's ability to handle difficult residents to prospective employers.

- Staff support programs and education on their reporting responsibilities and the consequences of failure to report.
- Close scrutiny of incident reports.
- Careful admission assessment of abuse, neglect and misappropriation of property.
- Development of care plans which include approaches to dealing with residents who may provoke hostile behavior by staff members or fellow residents where applicable.
- Provision of relevant information regarding difficult or emotionally unstable residents, and approaches to be used in caring for them, on a systematic basis.
- Termination, pursuant to 42 CFR 483.13(c)(1)(ii), of an employee when there is a substantiated finding of abuse, neglect, or misappropriation recorded in the Nurse Aide Registry.

5240. Facility Investigation and Reporting of Incidents

5241. Investigation

Each long term care facility must review any and all situations or incidents in which a resident may have suffered physical or other harm for reasons which are unknown, unclear or not adequately explained. If, during the course of that review, the facility finds reason to believe that abuse, neglect, or misappropriation was or is suspected to have been the cause of that harm, the incident must be reported to the Bureau.

A nursing home administrator or nursing director is first expected to immediately conduct a thorough in-house investigation to determine what happened and do the following:

- If it is determined by a conclusive investigation that the incident did not occur or was not abuse, neglect, or misappropriation, a detailed incident report and the investigation findings must be filed in the facility. It is not necessary to notify the Bureau in those cases.
- If it is determined that the abusive practices did occur or are still suspected then the nursing home is required to notify the Bureau as described below.

During and subsequent to its investigation the facility must take protective and corrective actions to protect residents from current abuse, neglect, or misappropriation and prevent further incidents. Such protective and/or remedial action must not be delayed solely because the Bureau may not have completed its own investigation.

Facilities which are cited for abuse, neglect, or misappropriation subsequent to a Bureau investigation must submit plans of correction which include taking any and all protective and/or remedial actions reasonably necessary to prevent further harm to that resident and/or all other residents.

5242. Incidents That Need To Be Reported

Facilities must report any incident involving abuse, neglect, or misappropriation, if upon immediate investigation, it is determined that the incident did occur or is still suspected.

5243. Incidents That Do Not Need To Be Reported

Incidents do not need to be reported to the Bureau if it is determined by a conclusive facility investigation that the incident did not occur or was not abuse, neglect, or misappropriation. A detailed incident report and the investigation findings must be filed in the facility for potential review by Bureau surveyors at surveys or other visits. These reports must be made available for review or copying in accordance with MCL 333.20155(11).

5244. Waiver of Civil Fines Against Facility Which Reports Timely

In the interest of timely self-reporting and to encourage the reporting of incidents which may in turn result in fines against the facility, the Bureau waives any civil fines due the department under Section 21799c which might otherwise be assessable against the facility for resident rights violations. However, any amount payable to the resident will still be assessed.

5250. Procedure for Reporting to the Bureau

5251. How to Report

Facility reported incidents are required by law to be reported by telephone. The telephone numbers for these reports are 1-800-882-6006 or 517-241-4712.

Facilities should also complete the [*Facility Incident Report*](#) form (Appendix D) and submit it by fax and/or mail within 5 calendar days of the alleged incident.

5252. Information to be Reported

Facilities must report the information contained on the *Facility Incident Report* form. When reporting by telephone, facilities should be prepared to submit as much of the information on the form as is available at the time of reporting.

5253. When to Report

The facility should immediately report these situations:

- **Elopement of a resident who remains missing for more than two (2) hours** (less where there is a strong potential to become an immediate threat to life, e.g., either because of inclement weather conditions or known hazards outside the facility)
- **An elopement that occurs outside the facility during an outing**

Within 24 hours after the facility becomes aware of the incident

The following situations must be reported to the Bureau within 24 hours after the facility becomes aware of the incident, regardless of whether the facility investigation has been concluded:

- An injury or incident involving a death or potential criminal activity under investigation by a state or local law enforcement agency
- Abuse with injuries

- Injuries of unknown origin that result in interference with physiologic functions that are an immediate threat to life or have a strong potential to become an immediate threat to life.
- Multiple (3 or more) resident-to-resident altercations by a specific resident.
- Resident-to-resident altercations that result in injuries that interfere with vital physiologic functions that are an immediate threat to life or have a strong potential to become an immediate threat to life.
- Serious injury that is life-threatening to the resident
- Sexual assault
- An allegation of failure to re-admit a Medicaid resident

Important: The Bureau also operates a 24-hour Emergency Hotline for nursing homes to report certain emergency events, including some of the incidents included above. Any such incidents reported to the 24-hour Emergency Hotline must also be reported to the Complaint Hotline.

Within 5 days after the facility becomes aware of the incident

All other reportable incidents of a less serious nature than those listed above. These incidents must be reported within 24 hours from the date of completion of the in-house investigation but **no later than 5 days** after the facility becomes aware of the incident.

5260. Procedure for Reporting Under the Adult Protective Services Act

In addition to licensure requirements, the Adult Protective Services Act, 1982 PA 519, requires health professionals and employees of health care facilities to report any incident of suspected abuse, neglect, or misappropriation of a resident or resident. This law provides that any facility or facility employee who suspects or has reasonable cause to believe that an adult has been subjected to abuse, neglect, or misappropriation as defined by the Adult Protective Services Act, shall make a report to the Family Independence Agency.

Incidents of resident abuse, neglect, or misappropriation that occur while a resident is on leave from the facility should be reported to the Adult Protective Services Unit in the county Family Independence Agency office. Information reported should include:

- Any and all information the reporting individual may have about the location, nature and extent of the alleged abuse, neglect, or misappropriation
- The circumstances under which the reporting individual became aware of the alleged abuse, neglect, or misappropriation
- The age of the resident
- Information about any treatment provided to the resident in question.
- Any other available information which may be helpful in establishing the cause of the alleged abuse, neglect, or misappropriation, or in identifying the person or persons responsible for that alleged abuse, neglect, or misappropriation

NOTE: Facilities that report to the Bureau incidents that occur within the facility do not need to also report these same incidents to the Family Independence Agency.

5270. Bureau Actions When A Facility Fails To Report

5271. General Actions

The Bureau utilizes all available statutes, rules, and certification requirements to enforce legal reporting requirements including civil fines, ban on admissions, and other remedies against facilities who are found to have violated statutory reporting requirements and the right of each resident or resident to a safe and healthful environment.

5272. Failure to Report

The failure of a facility to report pursuant to Section 21771 is considered in the assessment of any civil fines pursuant to the Michigan Public Health Code Section 21799(c)(4).

The Bureau cites facilities that fail to report immediately (as defined above) even if they voluntarily report later.

EXCEPTION: As noted above, facilities which conduct a thorough in-house investigation and determine that the incident was not abuse, neglect, or misappropriation are required to maintain a detailed report or accident report on file in the facility and it is not necessary to notify the Bureau. If investigation determines that the incident was in fact abuse, neglect, or misappropriation, the facility is not cited by the Bureau for failure to report if it is determined that the facility conducted a thorough investigation and made a good faith, informed judgment that the incident was not abuse, neglect, or misappropriation.

5273. Failure to Report Under Adult Protective Services Act

The mandatory reporting of suspected abuse, neglect or misappropriation under the Adult Protective Services Act is actively monitored and enforced by the Bureau in facilities as part of licensure and certification programs.

5280. Special Requirement For Plans Of Correction In Response To Abuse, Neglect, Or Misappropriation

In addition to other requirements, a Plan of Correction in response to resident abuse, neglect, or misappropriation must include facility action to take any and all protective and/or remedial actions that are reasonably necessary to prevent further harm to that resident and/or all other residents.

CHAPTER 6

BUREAU INVESTIGATIONS

6000. BUREAU RESPONSIBILITIES

The Bureau has responsibility for investigating complaints of abuse, neglect, or misappropriation of adult patients and residents insofar as these incidents occur in nursing homes, hospital long term care units county medical care facilities, These incidents may involve staff members, other residents/patients, family members or any other persons. The Bureau also has responsibility for investigating complaints against hospitals, hospices and other health facilities identified in MCL 333.20106 alleging non-compliance with Public Health Code or federal law.

The Bureau also takes action against facilities that fail to report as described in Section 5270.

6100. REVIEW OF LONG-TERM CARE COMPLAINTS AND FACILITY REPORTED INCIDENTS

Upon receipt of a complaint or facility reported incident, the Complaint Investigation Unit determines, based on the allegations presented, whether a state licensing law or rule, or a federal certification regulation has been, or is in danger of being violated.

If a complaint, in part or whole, appears to be within the jurisdiction of another agency of government, then the Complaint Investigation Unit refers the complaint (or part thereof) to the appropriate agency and informs the complainant of the referral. In addition to the Bureau's investigation, the Department of Attorney General, Health Care Fraud Division and the Bureau of Health Professions, Complaint and Allegation Division, are informed of all alleged resident abuse, neglect, or misappropriation violations. The Bureau of Health Professions receives notice of any complaint alleging misconduct by a health care professional. The Bureau complies with requests from the Department of Attorney General or other law enforcement agencies to coordinate Public Health Code investigations with criminal law enforcement activities.

6200. PRIORITIZATION OF COMPLAINTS AND FACILITY REPORTED INCIDENTS

The Complaint Investigation Unit assigns priorities to complaints and facility reported incidents according to the following guidelines:

Priority 1: Complaints or facility reported incidents that include allegations that non-compliance has caused or is likely to cause serious injury, serious harm impairment or death to a resident; complaints or facility reported incidents where a determination has been made that immediate jeopardy may be present and on-going. Examples include, but are not limited to:

- An injury or incident involving a death or potential criminal activity under investigation by a state or local law enforcement agency.
- Abuse with injuries.
- Elopement of a resident missing for more than 2 hours (less where there is a strong potential to become an immediate threat to life, e.g., either because of inclement weather conditions or known hazards outside the facility).

- Injuries of unknown origin that result in interference with physiologic functions that are an immediate threat to life or have a strong potential to become an immediate threat to life.
- Multiple (3 or more) resident-to-resident altercations by a specific resident.
- Resident-to-resident altercations that result in injuries that interfere with vital physiologic functions that are an immediate threat to life or have a strong potential to become an immediate threat to life.
- Serious injury that is life-threatening to the resident.
- Sexual assault.

Priority 1 incorporates CMS priority *Immediate Jeopardy*.
Ref. S&C 04-09, November 13, 2003.

Priority 2: Complaints or facility reported incidents that allege or indicate actual harm occurred, or may occur; alleged non-compliance that may have caused harm that negatively impacts the individual's mental, physical and/or psychosocial status and is of such consequence that a rapid response is indicated. Examples include, but are not limited to:

- A resident is intimidated or threatened.
- A resident is physically abused by spitting, slapping, sticking with a sharp object, pushing or pinching.
- An unexplained or unexpected death with circumstances indicating that there was abuse or neglect.
- Resident-to-resident sexual assault, harassment or coercion.
- Falls resulting in a fracture.
- Inappropriate use of restraints resulting in injury.
- Inadequate staffing that negatively impacts on resident health and safety.
- Failure to obtain appropriate care or medical services, e.g., failure to respond to a significant change in a resident's condition.
- Refusal to readmit a resident.
- Elopement of a resident (subsequently found) resulting in harm, but not serious injury.

Priority 2 incorporates CMS priority *Non-Immediate Jeopardy – High*.
Ref. S&C 04-09, November 13, 2003.

Priority 3: Complaints or facility reported incidents that are not assigned Priority 1 or 2. Priority 3 includes alleged non-compliance that caused or may cause a negative outcome that is of limited consequence and does not significantly impair the individual's mental, physical and/or psychosocial status to function.

Allegations regarding conditions that may have caused physical, mental and/or psychosocial discomfort that do not constitute injury or damage do not require an investigation, but should be reviewed at the next on-site abbreviated or standard survey if not investigated immediately following receipt of the allegations. CMS priority *Non-Immediate Jeopardy – Low* conditions do not require investigation.

The reviewer may consider the credibility of the allegations, and the timeliness of the alleged incident to the date of filing and whether an intervening survey addressed the allegation.

Priority 3 incorporates CMS priorities *Non-Immediate Jeopardy – Medium*.
Ref. S&C 04-09, November 13, 2003.

6300. TIMING OF INVESTIGATIONS

As required by law, all investigations are conducted on a date chosen by the Bureau and without advance notice to the facility or the complainant. Investigations may be conducted at other than day shift hours on weekdays or at any time on weekends in keeping with the types of allegations and their severity.

Under Section 21799(a), the fact that a complaint has been made and the nature of a complaint is not public information and may not be released until it has been disclosed to the facility – which is no earlier than the start of the on-site investigation.

6310. Long Term Care Facilities

Priority 1 complaint and facility reported incident investigations begin within 2 working days of receipt of a complaint through an on-site investigation. Every reasonable effort will be made to initiate an on-site investigation within 24 hours of receipt of a complaint or notice of an incident that involves elopement where the resident's whereabouts is currently unknown, sexual abuse or other situation where immediate jeopardy is presumed current and ongoing.

Priority 2 complaint and facility reported incident investigations begin within 10 working days of receipt through a stand-alone, on-site investigation.

Priority 3 complaint investigations begin within 15 days of receipt of a written complaint. The initial investigation activity may be an on-site visit, telephone contact, electronic transfer of information or written request for complaint information.

Priority 3 facility reported incidents are referred to Licensing Teams for an on-site investigation, inclusion as an integrated issue within a regular on-site survey process, or by the submission and review of facility investigation documents within 60 days of receipt of the report. The decision to conduct an on-site investigation is based on the following criteria:

- The seriousness of the actual or potential deficiency.
- Whether the facility has presented a credible report of the incident and its investigation.
- Whether the appropriate corrective measures were implemented or a corrective action plan is submitted.
- Whether a quality assurance program is in place
- The date proximity of the next standard survey.

6320. Other than Long Term Care Facilities

Complaints received against accredited acute care hospitals, including all Medicare hospital dumping allegations, are referred by the CIU to the Center for Medicare and Medicaid Services (CMS) Regional Office for its evaluation and direction relative to the specific areas of the hospital's operation to be investigated. This process is in accordance with the CMS State Operations Manual.

For the Division of Licensing and Certification, the urgency of action and priority assigned to complaints is made in light of the following:

- A progressively worsening situation.
- A possible life-threatening situation.
- An increasing number of individuals involved or at risk.
- An administrative need to expedite the investigation; e.g., a pending administrative hearing or the reoccurrence of a known problem in a facility or agency.
- An alleged failure to admit a patient.
- A death related to restraints or seclusion.

The non-long term care priorities are:

- Investigation within two working days where a determination is made that immediate jeopardy may be present and on-going.
- Investigation within 5 working days after the receipt of authorization to investigate an EMTALA complaint.
- Investigation within 5 working days of the receipt of authorization to investigate a restraint/seclusion death.
- Investigation within 10 working days of the receipt of authorization to investigate a complaint alleging harm that impairs mental, physical and/or psychosocial status.
- Investigation within 45 working days of the receipt of authorization to investigate non-EMTALA and non-immediate jeopardy complaints.

Reference: S&C 04-09, November 13, 2003

6400. COMPLAINT AND FACILITY REPORTED INCIDENT INVESTIGATION RESPONSIBILITIES

The *Complaint Investigation Unit* (CIU) within the Division of Operations is responsible for the investigation of the complaints about nursing homes and facility reported incidents reported by nursing homes except in the Licensing Team F area.

Licensing Team F within the Division of Nursing Home Monitoring investigates all complaints against nursing homes and facility reported incidents within the northern Lower Peninsula and Upper Peninsula counties assigned to the team, plus Manistee, Wexford, Missaukee, Roscommon, Oscoda and Alcona Counties. *Licensing Teams A through E* within the Division of Nursing Home Monitoring are responsible for investigation of Priority 3 facility reported incidents.

The *Division of Licensing and Certification* is responsible for investigation of complaints about the following non-LTC facilities:

- Acute care hospitals.
- Psychiatric facilities.
- Hospices and hospice residences.
- Freestanding surgical outpatient facilities and ambulatory surgery centers.
- Clinical laboratories.
- End-stage renal disease (kidney dialysis) facilities.
- Home health agencies.
- Outpatient rehabilitation facilities.
- Portable x-ray providers.
- End-stage renal dialysis facilities.
- Rural health clinics.

These respective organizational units are responsible for:

- Forwarding all complaint investigation reports to the facility and the complainant when an investigation is completed.
- Forwarding the results of facility reported incident investigations to nursing homes.
- Referring findings involving licensed or certified health care professionals, including certified nurse aides, to the Michigan Department of Community Health, Bureau of Health Professions for possible licensure or certification action.
- Recommending appropriate enforcement activity to the Enforcement Unit of the Division of Operations, and for initiating civil penalty requests for resident rights' violations.

6500. GENERAL INVESTIGATIVE PROCESS

The Complaint Investigation Unit forwards complaints to the appropriate responsible unit. The Licensing Officer or Survey Monitor assigns each complaint to a surveyor. If the complaint concerns conditions on a certain day (e.g. weekends) or on a certain shift (e.g.: 11 p.m. - 7:00 a.m.), the manager should consider directing the surveyor to investigate it at the time relevant to the complaint.

Chapter 7 contains details regarding the investigative processes used by the Bureau.

6510. Evidentiary Considerations

The surveyor must consider the following when collecting and analyzing the evidence:

- Initial evidence supplied by the complainant or the facility.
- The facility and complainant should be given an opportunity to provide additional information for the purpose of clarification, if needed.
- In making determinations, Bureau surveyors may make judgments as to the credibility of the resident, witnesses and other individuals who are interviewed. In investigating one-on-one incidents where the alleged perpetrator denies the allegations of the complainant, and the surveyor cannot identify any witnesses or physical evidence that would substantiate the claim, the credibility of the two parties may be considered. However, if the surveyor

determines that an individual is not credible, the report must contain the basis for that determination.

- Resident-to-resident abuse incidents must be evaluated very carefully to determine whether or not resident-to-resident abuse did occur and can be properly documented in the investigation report.
 - ▶ If the resident-to-resident abuse was a spontaneous event in which the facility had no reasonable warning or reason to anticipate its occurrence, then the abuse is described only in the text of the investigation report and does not appear as a deficiency on the CMS-2567L form.
 - ▶ If the resident-to-resident abuse occurred when the facility had or should have reasonably had an apprehension or warning of the potential for abuse, then a finding against the facility is made under Section 20201(2)(1) on the State Form and F223 on the CMS-2567L form. Under these circumstances, a state civil penalty is assessed against the facility in accordance with Section 21799.
 - ▶ Section 21771 is not considered applicable to resident-to-resident abuse since it deals with staff-to-resident abuse only.
- Surveyors may obtain written statements signed by individual eyewitnesses and/or a complainant/resident as to the events that occurred.
- Pursuant to Section 21799a(3), a complainant whose testimony or statement is essential to an investigation is given an opportunity to withdraw a complaint before disclosure of the complainant's identity is revealed.

6600. COMPLIANCE DECISION AND CITATIONS FOR NONCOMPLIANCE

At the conclusion of the investigation, the Bureau surveyor determines, on the basis of the evidence available, whether or not allegations are substantiated. In doing so, the surveyor must consider and give probative effect to all evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. For all substantiated allegations, the surveyor determines the federal F tags and state M tags to be cited and produces the *Statement of Deficiencies* (CMS-2567L).

Allegations are "not substantiated" if the information available indicates the facility was in compliance with requirements in regard to the allegations, or the evidence is insufficient to permit a reasonable decision and it is unreasonably difficult to obtain more information. If no allegations in a complaint or facility reported incident are substantiated, no CMS-2567L is produced.

6700. DETERMINATION OF CITATION SCOPE AND SEVERITY LEVELS FOR FEDERAL CITATIONS

The surveyor determines the scope and severity levels for federal citations using the guidance contained in SOM Appendix P, Part V Deficiency Categorization. In addition to the guidance given in Part V, the following must be considered in citations for abuse, neglect or misappropriation:

Substantiated abuse, neglect or misappropriation by facility staff member(s) is cited at Severity Level 2, 3, or 4 depending on the severity of the impact on the resident(s) as defined.

Even if abuse, neglect or misappropriation is not substantiated in regard to the residents involved in the reported incident or for other residents evaluated in the investigation, the facility may still be cited at Severity Level 1 or 2 if the required abuse prevention system is not in place.

6800. ISSUANCE OF REPORT TO THE COMPLAINANT

The Bureau informs the complainant of its findings or the status of its investigation, unless otherwise indicated by the complainant, within 30 days after receipt of the complaint. The Bureau provides the complainant with a copy of its written findings and any correction notice, compliance order, or other enforcement action, or a status report indicating when these documents may be expected.

Section 21743(1)(d) of the Code provides that a nursing home complaint investigation report shall not be disclosed to a person, other than the complainant, or the complainant's representative, before it is disclosed to the nursing facility pursuant to Section 21799a. Therefore, the final report is sent simultaneously to both the complainant and the health facility.

6810. Complainant's Right to Contest Bureau Actions

A complainant who is dissatisfied with a Bureau determination or investigation involving a nursing home may request a hearing in accordance with Section 21799(a)(9) of the Public Health Code.

Pursuant to Section 20176(2) of the Code, complaint findings involving facilities other than nursing homes may be appealed to the Director.

6900. ISSUANCE OF REPORT AND ENFORCEMENT ACTIONS TO THE FACILITY

Complaint and facility reported incident investigations with no findings of noncompliance are documented on the investigation report and sent to the facility.

Complaints and facility reported incident investigations with findings of noncompliance are documented on the *Statement of Deficiencies* (CMS-2567L) and transmitted with a copy of the investigation report and an enforcement notice to the facility. At a minimum, an acceptable Plan of Correction is required. All Plans of Correction are reviewed for acceptability by the Manager/Licensing Officer/Survey Monitor responsible for the individual investigation.

Enforcement is pursued in accordance with the provisions of State and Federal law. The Licensing Officer/Survey Monitor is responsible for initiating an enforcement request. If approved by the Enforcement Unit, it will result in the issuance of a civil penalty or other enforcement action or recommendation against the facility. However, the Department waives state civil fines due it from the facility when cases of abuse and neglect are reported by the facility to the Bureau on a timely basis. In such cases, the Bureau nevertheless issues an order requiring the payment of \$100 to each affected resident if the allegation is substantiated.

A facility that disagrees with an enforcement action arising out of a complaint or facility reported incident has the right to contest the Bureau's action as provided by law. Procedures for such

appeals vary depending on the enforcement action taken by the Bureau. A written determination, correction notice, compliance order or other enforcement action resulting from a complaint is available for public inspection.

6910. Preliminary Action in Immediate Jeopardy or Serious Harm Cases

If the Bureau finds, at any time, that a resident has suffered particularly serious harm or that the health or safety of a resident in a facility is in jeopardy as a result of actual or suspected abuse, neglect, or misappropriation, it immediately initiates any and all necessary actions which can legally be taken on its own to ensure resident safety.

If the preliminary investigation finds that the facility has failed to assure the safe performance of health care in the facility and that adequate corrective action to protect current and future residents has not been implemented or cannot be verified, an immediate voluntary suspension of admissions (and/or re-admissions) is requested of the facility, pending completion of a full Bureau investigation.

If the facility fails to voluntarily suspend admissions (and/or re-admissions) pending a full investigation, a correction notice or order requiring that action under Section 21799(b)(1) or 20162 of the Public Health Code is immediately initiated and continues until the full Bureau investigation and subsequent enforcement action, if any, is completed.

6920. Actions in All Cases

At the conclusion of the investigation, the surveyor prepares a final complaint investigation report containing all of its findings and any resulting recommendations for further action. Based on those findings, the Bureau takes the following actions:

- If the Bureau finds that a resident has suffered serious harm, or that the health or safety of a resident in a facility is in jeopardy, as a result of abuse, neglect, or misappropriation, it immediately contacts the Department of Attorney General, Health Care Fraud Division and provides that office with any and all relevant information about the case. The Health Care Fraud Division may initiate a criminal investigation of the matter and/or refer the case to another appropriate division of the Department of Attorney General for possible protective civil court action.
At the conclusion of its investigation, the Bureau sends a copy of its final investigation report, containing its findings and any recommendations for further action to the Health Care Fraud Division. The Health Care Fraud Division subsequently notifies the Bureau of any action taken.
- If the findings indicate that the facility has failed to fully comply with State or federal law or regulations, the Bureau issues a deficiency statement to the facility that lists any and all deficiencies that may have been discovered during the investigation. Within ten (10) calendar days after receiving this deficiency statement, the facility must submit an acceptable Plan for Correction of these deficiencies. A facility has the right to request an Informal Dispute Resolution for any or all deficiencies.
- If the findings reveal that a person who is required by the state resident abuse statute to report suspected resident abuse, neglect, or misappropriation has failed to do so, the Bureau

refers the matter to the Department of Attorney General or the appropriate professional licensing board for possible disciplinary action.

- If the findings indicate that abuse, neglect, or misappropriation has occurred and that a particular licensed or professional nurse or registered nurse aide is responsible for that abuse, neglect, or misappropriation, the Bureau refers the matter to the Bureau of Health Professions. The Bureau of Health Professions is responsible for placement of abuse conviction information on the Nurse Aide Registry. Aides with such convictions are prevented from employment in nursing homes.
- The Bureau cooperates with state and local law enforcement agencies in the investigation of potential criminal activity, but reserves the right to take any enforcement action authorized by the Public Health Code to protect the health and safety of residents in long term care facilities.

6950. Responsibility Of Other Governmental Agencies

The Family Independence Agency local office staff is responsible for the investigation of abuse involving adult residents of MDCH licensed facilities if the alleged violation took place outside the facility in the community; e.g., misappropriation of a nursing home resident's fiscal/property resource by a guardian or relative, abuse of a nursing home resident by family or other persons while the resident is on a home visit, etc.

If Family Independence Agency personnel and/or complainants feel that an adult resident is seriously at risk, a telephone call is made by the Adult Protective Services worker directly to the Michigan Department of Community Health, Complaint Investigation Unit in Lansing at 1-800-882-6006.

The Bureau makes referrals for services to the local office of the Family Independence Agency in the county where the licensed health care facility is located, whenever their services are needed.

CHAPTER 7

BUREAU INVESTIGATIVE PROCESSES

7000. INTRODUCTION

This chapter contains the general investigative process used by the Bureau for investigation of complaints and facility reported incidents. It also contains processes for specific issues that are frequently the subject of complaints and facility reported incidents.

Nursing homes are encouraged to adapt these processes for the internal investigation of complaints as required by Nursing Home Rule 113(2) and PA. 11 of 2002. They are also encouraged to adapt them for the internal investigation of incidents of abuse, neglect or misappropriation as detailed in Chapter 5 of this manual.

7100. GENERAL INVESTIGATIVE PROCESS

7110. Abbreviated Standard Survey

The Bureau utilizes the following “abbreviated standard survey” protocol mandated by the federal Centers for Medicare and Medicaid Services for all complaint and facility reported incident investigations in Medicare or Medicaid certified facilities. By policy, the Bureau utilizes the same protocol for investigations of facilities that are not Medicare or Medicaid certified.

NOTE: The following protocol is a direct copy of the CMS document. The Department is the “State Survey Agency” for Michigan referred to in the document.

.....

A. Complaint Investigations – The survey Agency must review all complaint allegations and conduct a standard or an abbreviated standard survey to investigate complaints of violations of requirements if its review of the allegation concludes that:

1. A deficiency in one or more of the requirements may have occurred;
2. Only a survey can determine whether a deficiency or deficiencies exist; and
3. The complaint is general or specific and may involve staff, residents, volunteers, the physical environment or administration.

Complaint investigations follow, as appropriate, the pertinent survey tasks, and information gathered is recorded on the appropriate survey worksheets. However, if the documentation required is minimal, use the CMS-807 to record information during the complaint investigation. Record deficiencies on the CMS-2567L or the Notice of Isolated Deficiencies, or both as applicable.

The timing, scope, duration and conduct of a complaint investigation are determined by the State survey agency, except when the complaint involves an allegation of immediate jeopardy to resident health and safety, which must be investigated within 2 working days of receipt; allegations

of harm within 10 working days. (See § 7700.) The team should conduct the necessary investigation to resolve the complaint. If the complaint concerns conditions on a certain day (e.g., on weekends), or on a certain shift (e.g.; 11 p.m. - 7 a.m.), the survey agency should make an attempt to investigate it at the time relevant to the complaint. In most cases, the following tasks, or portion of tasks, should be performed in a complaint investigation.

- B. Task 1 – Offsite Survey Preparation – Obtain as much information as you can about the complaint before you begin to plan your investigation, including:
1. Name of complainant;
 2. Nature of the complaint – describe exactly the facts of the complaint situation;
 3. Information about when the complaint situation occurred, whether it was an isolated event or an ongoing situation – date, time, time between different events;
 4. Place where the incident happened – care unit, resident room;
 5. How it happened – sequence of events;
 6. Whether a resident or a family member of a resident was involved;
 7. Witnesses to complaint situation – anyone who saw incident happen;
 8. Staff or other residents involved; and
 9. Other persons involved – volunteers or visitors.

Review any information about the facility that you think would be helpful to know in planning your investigation such as the 3 Quality Indicator Reports, Oscar Reports 3 and 4, and State Agency files. Contact the ombudsman to discuss the nature of the complaint and whether there have been any similar complaints reported to and substantiated by the ombudsman.

Review the related regulatory requirements or standards that pertain to the complaint. For example, if it is a complaint about abuse, review the requirements at 42 CFR 483.13.

Plan the investigation. Before you go to the facility, plan what information you need to obtain during the complaint investigation based on the information you have already acquired. Consider practical methods to obtain that information.

C. Task 2 – Entrance Conference/Onsite Preparatory Activities

On-site complaint investigations should always be unannounced. Upon entrance, advise the facility's administrator of the general purpose of the visit. It is important to let the facility know why you are there, but protect the confidentiality of those involved in the complaint. Do not release information that will cause you to lose opportunities for pertinent observations, interviews, and record reviews required for a thorough investigation. For example, if the complaint is that food that is intended to be served hot is always served cold, you would not tell the facility the exact complaint. Rather, you may say it is a situation related to dietary requirements.

D. Task 5 – Information Gathering

The order and manner in which you gather information will depend on the type of complaint you are investigating. Conduct comprehensive, focused, and/or closed record reviews as appropriate

for the type of complaint. It is very important to remember that the determination of whether the complaint happened is not enough. The surveyor needs to determine noncompliant facility practices related to the complaint situation and which, if any, requirements are not met by the facility.

Do your information gathering in order of priorities; i.e., obtain the most critical information first. Based on this critical information about the incident, determine what other information to obtain in the investigation.

Observations, record review and interviews can be done in any order necessary. As you obtain information, use what you have learned to determine what needs to be clarified or verified as you continue the investigation.

Observe the physical environment, situations, procedures, patterns of care, delivery of services to residents, and interactions related to the complaint. Also, if necessary, observe other residents with the same care need. After determining what occurred, i.e., what happened to the resident and the outcome, investigate what facility practice(s) or procedures affected the occurrence of the incident.

EXAMPLE: It was verified through your investigation that a resident developed a pressure sore which progressed to a Stage IV, became infected and resulted in the resident requiring hospitalization for aggressive antibiotic therapy. Observe as appropriate: dressing changes, especially to any other residents with Stage III or IV pressure sores; infection control techniques such as hand washing, linen handling, and care of residents with infections; care given to prevent development of pressure sores (such as turning and repositioning, use of specialized bedding when appropriate, treatments done when ordered, keeping residents dry, and provision of adequate nutritional support for wound healing).

Record review: If a specific resident is involved, focus on the condition of the resident before and after the incident. If there are care issues, determine whether the appropriate assessments, care planning, implementation of care, and evaluations of the outcome of care have been done as specified by the regulatory requirements.

EXAMPLE: For a complaint of verbal and physical abuse, review the record to determine the resident's mood and demeanor before and after the alleged abuse. Determine if there are any other reasons for the change in the resident's demeanor and behavior. Determine whether an assessment has been done to determine the reason for the change in mood and behavior. Does the record document any unexplained bruises and/or complaints of pain, and whether they occurred in relation to the alleged incident?

Interviews: Interview the person who made the complaint. If the complainant is not at the facility at the time of the survey, he or she should be interviewed by telephone, if possible. Also, interview the person the complaint is about. Then, interview any other witnesses or staff involved. In order to maintain the confidentiality of your witnesses, change the order of interviews if necessary. You may not want to interview the person who made the complaint first, as that may

identify the person to the facility as the complainant. Interview residents with similar care needs at their convenience.

As interviews proceed, prepare outlines you need for other identified witnesses and revise outlines as new information is obtained.

E. Task 6 – Information Analysis

Review all information collected. If there are inconsistencies, do additional data collection as needed, to resolve the inconsistencies. Determine if there is any other information still needed.

Determine whether:

1. The complaint is substantiated;
2. The facility failed to meet any of the regulatory requirements; and
3. The facility practice or procedure that contributed to the complaint has been changed to achieve and/or maintain compliance.

F. Task 7 – Exit Conference

Advise the administrator of the complaint investigation findings and any present deficiencies. Do not inform him/her of confidential information unless the individual who provided you with the information specifically authorizes you to do so.

If a deficiency is not present now, but was present and has been corrected (past noncompliance), notify the facility orally and in writing that the complaint was substantiated because deficiencies existed at the time that the complaint situation occurred. (See Task 5F, Section A and SOM 7510 for specific information when a CMP is imposed for egregious non-compliance concerning past non-compliance.)

If the complaint is unsubstantiated, that is the surveyor(s) cannot determine that it occurred and there is no indication of deficient practice, notify the facility of this decision.

Follow your usual office procedure in notifying the resident and/or person who made the complaint of your findings.

G. The Extended And Partial/Extended Survey

1. Extended and/or Partial Extended Survey.

Conduct an extended survey subsequent to a standard survey and conduct a partial extended survey subsequent to an abbreviated survey when you have determined that there is a substandard quality of care in:

- 42 CFR 483.13, Resident behavior and facility practices;
- 42 CFR 483.15, Quality of life; and/or
- 42 CFR 483.25, Quality of care.

When conducting the extended/partial extended survey, at a minimum, fully review and verify compliance with each tag number within 42 CFR 483.30, Nursing Services; 42 CFR 483.40, Physician Services and 42 CFR 483.75, Administration. Focus on the facility's policies and procedures that may have produced the substandard quality of care. For an extended survey and partial extended survey, as appropriate, include a review of staffing, in service training and the infection control program. An extended/partial extended survey explores the extent to which structure and process factors such as written policies and procedures, staff qualifications and functional responsibilities, and specific agreements and contracts of the facility may have contributed to the outcomes. If the extended/partial extended survey was triggered by a deficiency in quality of care, conduct a detailed review of the accuracy of resident assessment. During the partial extended survey, consider expanding the scope of the review to include a more comprehensive evaluation of the requirements at 42 CFR 483.13, 42 CFR 483.15 and/or 42 CFR 483.25 in which substandard quality of care was found.

Document your observations from the extended or partial extended survey on the CMS-805, or the CMS-807.

2. Review of the Accuracy of Resident Assessments During an Extended/Partial Extended Survey – The objective of this interview is to determine if resident assessments are accurate.

If an extended/partial extended survey is conducted based on substandard quality of care in Quality of Care (42 CFR 483.25), review the accuracy of resident assessments by:

- Reviewing a sample of comprehensive resident assessments completed no more than 30 days prior to conducting the survey;
- Comparing your observations of the resident with the facility's assessment;
- Conducting the number of assessment reviews needed to make a decision concerning the accuracy of the facility's resident assessments; and
- Determining if your observations of the resident, and interviews with resident/staff/family, "match" the facility's assessment (or specific portions of the assessment) of the resident. If your observations and interviews do not "match," investigate further.

Record the in-depth review of the accuracy of resident assessments on Page 3 of the CMS 805.

3. Timing for Conducting the Extended Survey and Partial Extended Survey -- Conduct the extended or partial extended survey:
 - Prior to the exit conference, in which case the facility will be provided with information from the standard, abbreviated standard, partial extended or extended surveys; or
 - Not later than 2 weeks after the standard/abbreviated survey is completed, if the team is unable to conduct the extended survey or partial extended survey concurrent with the standard survey or the abbreviated survey. Advise the facility's administrator that there will be an extended or partial extended survey conducted and that an exit conference will be held at the completion of the survey.

H. Post Survey Revisit (Follow-Up)

In accordance with SOM 7317, the State agency conducts a revisit to confirm that the facility is in compliance and has the ability to remain in compliance. The purpose of the post-survey revisit (follow-up) is to re-evaluate the specific care and services that were cited as noncompliant during the original standard, abbreviated standard, extended or partial extended survey(s). Ascertain the status of corrective actions being taken on all requirements not in substantial compliance. Section 7304 contains the 4 elements a facility must address in developing an acceptable plan of correction. One of these elements is what continuous quality improvement system(s) a facility has in place to monitor its performance in identifying the deficient practice/care and assuring that it does not recur.

Because this survey process focuses on the care of the resident, revisits are almost always necessary to ascertain whether deficient practices have indeed been corrected. The nature of the noncompliance dictates the scope of the revisit. For example, do not perform another drug pass if no drug distribution related deficiencies were cited on the initial survey. Do interviews and closed record reviews, as appropriate. Prior to the revisit, review appropriate documents, including the plan of correction to focus the revisit interview.

Conduct as many survey tasks as needed to determine compliance status. However, the team is not prohibited from gathering information related to any requirement during a post-survey revisit

When selecting the resident sample for the revisit survey, determine the sample size using 60% of the sample size for a standard survey as described in Table 1, Resident Sample Selection. (Phase 1 sample size is 60%.) The follow-up survey does not require a 2 Phase sample selection.

Focus on selecting residents who are most likely to have those conditions/needs/problems cited in the original survey. If possible, include some residents identified as receiving substandard quality of care during the prior survey. If, after completing the revisit activities, you determine that the cited incidence(s) of noncompliance was not corrected, initiate enforcement action, as appropriate. (See SOM 7400 for specific guidance concerning initiation of enforcement action.)

Use appropriate CMS forms during this survey. However, if the need for documentation is minimal, use the Surveyor Notes Worksheet (CMS-807).

– Appendix P, Part II, State Operations Manual

7120. Additional Issues Related to the Abbreviated Standard Survey

Surveyors must adhere to the following additional issues when conducting the abbreviated standard survey.

Task 1: Offsite Survey Preparation

- ☐ Review the complaint and any supporting documentation. Review the Intake Sheet for any allegations that may not have been entered into ACTS. For facility reported incidents, review investigation materials submitted by the facility.

- Review the facility history and other licensure or certification information to determine if similar problems have occurred previously, including but not limited to the three Quality Indicator Reports.
- For complaints only: Contact and interview the complainant and other witnesses (if not likely to be on-site) to obtain specific information and clarification relative to each allegation. If the investigation requires interviews or record reviews which are likely to directly or indirectly identify the complainant, the complainant will be given an opportunity to withdraw the complaint prior to the on-site visit. Complaint cancellation may be oral or written. Oral cancellations must be noted on the Complaint Investigation Form with the name of the requester and the cancellation date.
- Do not announce an on-site complaint investigation. Section 20155(9) of the Public Health Code provides that a department employee who directly or indirectly gives prior notice regarding an inspection of a nursing home or home for the aged (other than an inspection of facility financial records) shall be guilty of a misdemeanor. The employee may also be subject to other disciplinary action under the Civil Service system.

Task 2: Entrance Conference/Onsite Preparatory Activities

For complaints only: Do not divulge the complainant's name without his/her permission if the facility is a nursing home. Care must be taken to not indirectly reveal the name of a confidential complainant in the written complaint report by references to relatives, guardians, friends, advocacy groups, etc. which could be attributed to the complainant. Do not take information that identifies the complainant into the facility.

Task 6: Information Analysis

- Do not close complaints due to the existence of a police investigation. These investigations are different in that they are criminal cases. The complaint investigation must be conducted under the survey and certification procedures, which are civil proceedings. If the police agency requests that surveyors not enter the facility during its investigation, the complaint investigation should be delayed. It must be documented in the complaint record why the complaint investigation is being delayed, the name of the police officer making the request and the length of the delay.
- For each allegation, decide if the information collected is sufficient to reach a finding. If not, the surveyor determines if additional information can reasonably be collected. For those allegations for which sufficient data cannot be collected, the surveyor documents the reasons. The surveyor determines if appropriate data has been obtained to resolve any other issues previously identified by the Licensing Officer and/or Survey Monitor.
- When violations are observed which fall outside the scope of the complaint, document them for inclusion in the complaint investigation report. The surveyor must evaluate each allegation contained in the complaint in light of the applicable regulatory requirements, including federal interpretive guidelines, state rule clarifications and other explanatory material.

Before reaching a final determination on each allegation, review pertinent records and other documents, interview witnesses, and seek out and collect any reasonably available additional information that may relate to the allegation. Determine if each allegation is substantiated or unsubstantiated.

Clearly indicate in the report if you were unable to re-create or otherwise develop sufficient data to reach a definitive compliance decision on any or all of the allegations.

Task 7: Exit Conference

- ☐ Conduct an exit conference with the facility administrator or person in charge prior to departure to discuss and outline the preliminary findings. For each substantiated allegation, state the requirements not met and their scope and severity, if applicable. Offer the facility the opportunity to supply additional information that it may not have provided prior to the exit conference.
- ☐ If evidence was obtained from residents(s), remind the facility in the exit conference that Sections 20201(4) and 21777(6) of the Code prohibit retaliation against a resident making a complaint. This may include an explanation of possible enforcement actions (i.e., civil fines for resident rights violations in nursing homes).

7200. PROCESSES FOR SPECIFIC ISSUES

The following processes have been developed to assist surveyors in investigating specific issues that are common in complaint and facility reported incident investigations. The processes are to be used within the framework of the general investigative process outlined above. The processes suggest the content and not the sequence or depth of the investigation which should be used by Bureau surveyors based on professional judgment and standards of practice.

The following specific issues are contained in this section:

- ☐ 7205 Inadequate or Inappropriate Care
- ☐ 7210 Pressure Sores
- ☐ 7215 Abuse
- ☐ 7220 Inadequate Staffing
- ☐ 7225 Lost/Stolen Resident Personal Property or Funds (Misappropriation)
- ☐ 7230 Refusal to Re-admit Following Hospitalization
- ☐ 7235 Hydration, Nutrition and Unintended Weight Loss
- ☐ 7240 Improper Food Temperatures
- ☐ 7245 Hot Water and Hot Fluids
- ☐ 7250 Leaking Roof
- ☐ 7255 Blocked or Failed Sewage System
- ☐ 7260 Lack of Heat
- ☐ 7265 Lack of Activities
- ☐ 7270 Elopements
- ☐ 7275 Bed Rails
- ☐ 7280 Hot Weather

7205. Inadequate and Inappropriate Care

The following process is used for investigations of failure by the facility/staff to provide adequate and appropriate resident care. Adequate and appropriate care may encompass quality of care, safety, nutritional, and other deficits as it relates to potential negative outcomes in residents. While these deficits represent examples, they are not intended to be an all-inclusive list. Noncompliance decisions may be based on the facility's failure to prevent, provide, or respond to the care needs and condition changes of the residents.

Off-Site Preparation

- ☐ Review OBRA Regulations:
 - ▶ F272 42 CFR 483.20
 - ▶ F279 42 CFR 483.20(k)
 - ▶ F309 42 CFR 483.25
 - ▶ F324 42 CFR 483.25(h)(2)
 - ▶ F325 and F326 42 CFR 483.25(i)
 - ▶ F328 42 CFR 483.25(k)
- ☐ Review state requirements:
 - ▶ M346 Section 20201(2)(e)
 - ▶ M090 Section 21771(1).
 - ▶ M673-690 Rule 707
 - ▶ M691-707 Rule 708
- ☐ Review other pertinent regulations relative to the issues as identified through contact with the complainant(s) prior to the on-site visit*.
- ☐ Review other quality of care/quality of life issues as they relate to adequate and appropriate care.
- ☐ Review the complaint information.
- ☐ Identify all allegations.
- ☐ Contact complainant(s) to review allegations and to clarify issues identified*.
- ☐ Review the last survey report, when needed.
- ☐ Review the 3 Quality Indicator Reports to preselect potential residents with care concerns.
- ☐ Prepare a plan of approach for on-site visit.

On-Site Investigation

- ☐ Conduct an entrance conference to identify the general purpose of the visit and to schedule potential formal interview(s).
- ☐ Tour applicable areas of the facility to observe for obvious evidence of inadequate and inappropriate care. Monitor relevant care techniques and/or approaches provided by facility staff.
- ☐ Initiate the informal interview process with residents and staff during the tour.
- ☐ Select the sample based on professional analysis of the data collected during the tour.
- ☐ Review the clinical record of the subject(s) of the complaint. Review the most recent comprehensive assessment/care plan, physician's orders, interdisciplinary progress notes,

laboratory reports, x-ray findings, and medication regime to identify any failure to prevent, provide or respond to the care needs of the residents.

- ☐ Review facility policy/procedures, accident/incident reports and/or any other relevant documents, if applicable.
- ☐ Interview direct care givers, to ascertain knowledge as required to provide care to the subject(s) of the complaint and/or other high-risk residents.
- ☐ Determine the necessary follow-up observations of the resident(s) in question and/or other high-risk resident(s).
- ☐ Complete the formal interviews.
- ☐ Compile the data and discuss preliminary findings with the administrative staff during the exit conference.

Off-Site Data Analysis/Report Writing

- ☐ Obtain records from other agencies as related to the complaint.
- ☐ Complete the interview process as it relates to the allegations by contacting any persons who were not on-site. Make reasonable attempts, using available means.
- ☐ Review and analyze the data collected.
- ☐ Identify any additional data necessary to make compliance decisions.
- ☐ Respond to incoming communications related to the complaint.
- ☐ Document the findings following the Principles of Documentation guidelines.
- ☐ Document if the allegations were or were not validated.
- ☐ Write the citations, if applicable.
- ☐ Contact the complainant(s) to relate findings*.
- ☐ Attach pertinent supportive data to the report if the allegations are validated.
- ☐ Notify the Attorney General's Office and/or other regulatory agencies, if needed.

* Does not apply to facility reported incidents.

7210. Pressure Sores

This process is used to investigate allegations of failure to prevent development of avoidable pressure sores and/or improper or inadequate care of existing pressure sores.

Off-Site Preparation

- ☐ Review OBRA Regulations
 - ▶ F272 42 CFR 483.20
 - ▶ F279 42 CFR 483.20(k)
 - ▶ F309 42 CFR 483.25
 - ▶ F314 42 CFR 483.25(c)
- ☐ Review state requirements:
 - ▶ M346 Section 20201(2)(e)
 - ▶ M684 Rule 707(4)(i)
 - ▶ M685 Rule 707(4)(j)
 - ▶ M686 Rule 707(4)(k)

- ▶ M409 Rule 803(3)
- ▶ M410 Rule 803(4)
- ☐ Review other pertinent regulations relative to the issues as identified through contact with the complainant(s) prior to the on-site visit*.
- ☐ Review the resident investigative protocol for pressure sores.
- ☐ Review complaint information.
- ☐ Identify allegations.
- ☐ Contact complainants to review allegations and to clarify issues identified. Document time and date that contact was made*.
- ☐ Review last survey report, when needed.
- ☐ Review the 3 Quality Indicator Reports (Q.I.) to preselect potential residents with the same problem(s).
- ☐ Prepare a plan of approach for on-site visit.

On-Site Investigation

- ☐ Conduct entrance conference to identify the general purpose of the visit and to schedule potential formal interviews.
- ☐ Tour applicable areas of the facility to observe if preventative strategies, relative to high-risk residents, have been implemented, if needed.
- ☐ Observe the skin condition, pressure sore(s), the position of the resident(s) in question and the general appearance of the resident(s) as it relates to his/her clinical condition and the physical environment.
- ☐ Select sample based on professional analysis of the data collected from the Q.I. Reports and during the tour.
- ☐ Determine necessary follow-up observations of the resident(s) in question and/or other high-risk residents.
- ☐ Interview direct care givers, to ascertain knowledge as required to provide care to the subject(s) of the complaint and/or other high-risk residents. Sample questions to ask staff:
- ☐ How do you manage pressure sores?
- ☐ Tell me how you identify pressure sores on admission.
- ☐ How do you identify pressure sores on an ongoing basis? (Ask various facility staff levels.)
- ☐ What is the process of assessing pressure sores?
- ☐ Do you have any problems with getting treatment supplies?
- ☐ Are there any problems with providing treatments as planned?
- ☐ Tell me about nutritional supplements.
- ☐ Is anyone other than nursing (hospice, physical therapy, dietary, infection control consultants) involved in wound care?
- ☐ If so, how do they communicate and collaborate?
- ☐ Complete formal interviews of resident/family using the following sample questions:
- ☐ Do you have any open areas/sores/skin problems?
- ☐ Do you have any pain (wherever pressure sores are a problem)?
- ☐ How is the facility staff caring for your skin problem/sore?
- ☐ How often do they provide the care?
- ☐ Is the care helping? Is the area getting better?

- ☐ Do you have any concerns about treatment/care?
- ☐ Review the clinical record of the subject(s) of the complaint and other sampled residents to verify the following:
 - ☐ When did the facility identify the pressure sore?
 - ☐ How was it assessed?
 - ☐ How was it care planned?
 - ☐ Was treatment provided according to plan?
 - ☐ How was the physician notified?
 - ☐ If healing is not occurring, has the physician been called to change the treatment regimen?
 - ☐ Does the resident have any medical diagnoses that substantially contribute to this problem?
 - ☐ Review the physician's orders, comprehensive resident assessment/care plan, nutritional assessment, treatment records, laboratory and x-ray reports, and interdisciplinary progress notes to determine healing or lack of healing as a result of care/treatment provided or adjusted accordingly.
- ☐ Compile data and discuss preliminary findings with the administrative staff during the exit conference.

Off-Site Data Analysis/Report Writing

- ☐ Obtain records from other agencies as related to the complaint.
- ☐ Complete the interview process as it relates to the allegations by contacting any persons who were not on-site. Make reasonable attempts, using available means.
- ☐ Review and analyze data collected.
- ☐ Identify any additional data necessary to make compliance decisions.
- ☐ Respond to incoming communication related to the complaint.
- ☐ Document findings following the Principles of Documentation guidelines.
- ☐ Document if allegations were or were not validated.
- ☐ Write citations, if applicable.
- ☐ Contact complainant(s) to relate findings*.

* Does not apply to facility reported incidents.

7215. Abuse

The following is used for investigations of abuse that includes sexual, physical, mental, verbal and involuntary seclusion as defined in the federal regulations. See Section 3300 for definitions and examples.

Off-Site Preparation

- ☐ Review OBRA Regulations:
 - ▶ F223 42 CFR 483.13(13)(b).
 - ▶ F224, F225, F226 42 CFR 483.13(c).
 - ▶ F279 42 CFR 483.20(k).
 - ▶ F272 42 CFR 483.20.

- Review state requirements:
 - ▶ M103 Section 20201(2)(1).
 - ▶ M090 Section 21771(1)(2).
- Review other pertinent regulations relative to the issues as identified through contact with the complainant(s) prior to the on-site visit*.
- Review other resident rights regulations as they may relate to the issue of abuse.
- Review complaint information.
- Identify allegations.
- Contact complainants to review allegations and to clarify issues identified*.
- Review last survey report, when needed.
- Review the 3 Quality Indicator Reports (Q.I.) to preselect potential residents with the same problem(s).
- Prepare a plan of approach for on-site visit.

On-Site Investigation

- Conduct an entrance conference to identify the general purpose of the visit and to schedule potential formal interviews.
- Tour applicable areas of the facility to observe for evidence of the identified areas of abuse.
- Observe interactions of the resident(s) with staff, other resident(s), and visitors. Observe for use of inappropriate techniques and/or approaches that may result in negative outcome.
- Observe non-verbal cues emitted by victim and/or other resident(s).
- Select the sample based on professional analysis of the data collected during the tour.
- Initiate informal interview process with resident(s) and staff during the tour.
- Interview staff regarding their treatment of resident(s) to ascertain possible mistreatment, knowledge of resident rights and the ability to differentiate between the different forms of abuse.
- Interview, as needed, the following: resident(s), victim(s), family members, members of the resident council, witnesses, perpetrator if known, management staff and any other pertinent staff identified during the investigation. Use the following sample questions:
 - ▶ Tell me how staff talk to you.
 - ▶ Use appropriate council probes, as needed, related to abuse and dignity.
 - ▶ Is there a particular person who is involved?
 - ▶ When did it happen?
 - ▶ Who was involved?
 - ▶ Whom did you talk to about this?
 - ▶ Has it happened before?
- Interview questions should proceed from general to specific and be open ended in order not to direct the responses of the resident(s)/other(s). Sample questions include:
 - ▶ How did this injury happen?
 - ▶ When did it happen?
 - ▶ Who was involved?
 - ▶ Whom did you talk to about this?
 - ▶ Have you been injured before?
 - ▶ Tell me about it (how, when, who).

- Review the clinical record of the subject(s) of the complaint. Review the most recent comprehensive assessment/care plan, psychiatric history, community mental health involvement, physician's orders and interdisciplinary progress notes to identify progress or lack of progress for psychosocial needs, patterns, history or management as identified in the clinical record.
- Review facility investigative report, written and/or video tape statements of the victim/witnesses, police reports if available, and accident/incident reports.
- Review related secondary sources of information, if needed (i.e. staff education records, personnel files, resident council minutes, policies/procedures).
- Validate that, once substantiated by the facility, the incident was reported to the Bureau, as required.
- Determine if abuse occurred. If abuse is substantiated, then complete Task 5G procedures as follows from Appendix P:
 - ▶ Obtain and review the facility's abuse prohibition policies and procedures to determine that they include the key components, i.e., screening, training, prevention, identification, investigation, protection and reporting/response. (See Guidance to Surveyors at F226.) It is not necessary for these items to be collected in one document or manual.
 - ▶ Interview the individual(s) identified by the facility as responsible for coordinating the policies and procedures to evaluate how each component of the policies and procedures is operationalized, if not obvious from the policies. How do you monitor the staff providing and/or supervising the delivery of resident care and services to assure that care service is provided as needed to assure that neglect of care does not occur?
 - ▶ Request written evidence of how the facility has handled alleged violations. Select 2-3 alleged violations (if the facility has this many) since the previous standard survey or the previous time this review has been done by the State.
 - ▶ Determine if the facility implemented adequate procedures:
 - For reporting and investigating
 - For protection of the resident during the investigation
 - For the provision of corrective action;

NOTE: The reporting requirements at both 42 CFR and 483.13(c) specify both a report of the alleged violation and a report of the results of the investigation to the Bureau.

- ▶ Determine if the facility reevaluated and revised applicable procedures as necessary.
- ▶ Interview several residents and families regarding their awareness of to whom and how to report allegations, incidents and/or complaints.
- ▶ Determine if staff are trained in and are knowledgeable about how to appropriately intervene in situations involving residents who have aggressive or catastrophic reactions.

NOTE: Catastrophic reactions are extraordinary reactions of residents to ordinary stimuli, such as the attempt to provide care. One definition in current literature is as follows: "...catastrophic reactions (are) defined as reactions or mood changes of the resident in response to what may seem to be minimal stimuli (e.g. bathing, dressing, having to go to the bathroom, a question asked of the person) that can be characterized by weeping,

blushing, anger, agitation, or stubbornness. Catastrophic reactions and other behaviors of Alzheimer residents: Special unit compared to traditional units. Elizabeth A. Swanson, Meridean L. Maas, and Cathleen Buckwaiter. Archives of Psychiatric Nursing. Vol. VII, No. 5 (October, 1993). Pp. 292-299.

- ▶ Determine if staff are knowledgeable regarding what, when and to whom to report according to the facility policies.
- ▶ Interview at least three front line supervisors of staff who interact with residents (Nursing, Dietary, Housekeeping, Activities, Social Services). Determine how they monitor the provision of care/services, the staff/resident interactions, deployment of staff to meet the residents' needs, and the potential for staff burnout that could lead to resident abuse.
- ▶ Obtain a list of all employees hired within the previous four months. From the list, select 5 and review their files to determine if the facility screened them according to their policies prior to their employment.
- Compile data and discuss preliminary findings with the administrative staff during the exit conference.

Off-Site Data Analysis/Report Writing

- Obtain records from other agencies as related to the complaint.
- Complete the interview process as it relates to the allegations by contacting any persons who were not on-site. Make reasonable attempts, using available means. If attempts to contact the accused person(s) are unsuccessful, a certified letter will be sent to the last known address.
- Review and analyze data collected.
- Identify any additional data necessary to make compliance decisions.
- Respond to incoming communication related to the complaint.
- Document findings following Principles of Documentation guidelines.
- Document if allegations were or were not validated.
- Write citations, if applicable.
- Contact complainant(s) to relate findings*.
- Attach pertinent supportive data to the report if the allegations are validated.
- Notify the Attorney General's Office and/or other regulatory agencies, if needed.

* Does not apply to facility reported incidents.

7220. Inadequate Staffing

This process is used to investigate allegations of failure to meet required state minimum staffing ratios or failure to provide sufficient staff to meet the needs of residents.

Off-Site Preparation

- Review OBRA Regulations:
 - ▶ F353 42 CFR 483.30(a)
 - ▶ F354 42 CFR 483.30(b)

- Review state requirements:
 - ▶ M047 Section 21720(a)(2)
 - ▶ M294 Rule 703(7)
- Review other pertinent regulations relative to the issues as identified through contact with the complainant(s), prior to the on-site visit*.
- Review complaint information.
- Identify allegations.
- Contact complainants to review allegations and to clarify issues identified*.
- Review last survey report, when needed.
- Review the 3 Quality Indicator Reports (Q.I.) to preselect potential residents where lack of staffing would impact their care needs.
- Prepare a plan of approach for on-site visit.

On-Site Investigation

- Conduct entrance conference to identify the general purpose of the visit and to schedule potential formal interviews.
- Request a copy of the actual working schedules for licensed and registered nursing staff for the time period identified in the complaint.
- Tour the facility within the time period referenced in the complaint, e.g., the p.m. shift, the weekend, as appropriate.
- Tour applicable areas of the facility to observe for evidence of sufficient staff to meet obvious resident needs and determine if registered/licensed nursing staff are available to monitor and supervise the delivery of care in accordance with individual resident comprehensive care plan. Evaluate the presence/absence of care provided specific to complaint issue and the quality of interactions between staff and residents during care.
- Interview resident(s), staff, family members, visitors and other persons related to the allegation(s) and/or beneficial to the investigation.
 - ▶ Sample questions for resident/family/roommate (as appropriate) and residents with similar care issues selected from the sample include:
 - Are you getting the (blank) care you need in a timely manner?
 - How does staff treat you?
 - How long has this been happening?
 - Is it different on other shifts? On other days of the week?
 - ▶ Sample questions for direct care staff include:
 - Tell me about how you provide (blank) care.
 - Are you able to complete the care in a timely manner according to your assignment?
 - If you can't complete your assignments, what happens?
 - If unable to complete assigned tasks, probe for time period.
 - ▶ Sample questions for supervisory staff include:
 - What is your system to ensure that residents are given (blank) care as planned?
 - Share your findings and ask for a response.
- Request that staffing reports be completed on the forms provided by the surveyor.
- Review time cards when staffing is below required minimums.
- Review facility records pertinent to the allegations.

- Analyze data to determine if there is a quality of care/quality of life deficiency. If yes, gather support information regarding staff numbers and the staff schedule/support documents as needed.
- Compile data and discuss preliminary findings with the administrative staff during the exit conference.

Off-Site Data Analysis/Report Writing

- Review and analyze the data collected.
- Complete the interview process as it relates to the allegations by contacting any persons who were not on-site. Make reasonable attempts, using available means.
- Identify any additional data necessary to make compliance decisions.
- Respond to incoming communication related to the complaint.
- Document the findings, following the Principles of Documentation guidelines.
- Document if allegations were or were not validated.
- Write the citations, if applicable.
- Contact the complainant(s) to relate the findings*

* Does not apply to facility reported incidents.

7225. Lost/Stolen Resident Personal Property or Funds (Misappropriation)

This process is used to investigate allegations of failure to provide for safekeeping of resident personal property, clothing or money, including funds in the resident trust fund.

NOTE: expand this to include investigation of cash stolen from resident rooms or funds stolen from the resident trust fund.

Off-Site Preparation

- Review OBRA Regulation:
 - ▶ F252 42 CFR 483.10(1)
- Review state requirements:
 - ▶ M105 Section 20201(3)(c)
 - ▶ M689 Rule 707(4)(n)
- Review other pertinent regulations relative to the issues as identified through contact with the complainant(s), prior to the on-site visit*.
- Review complaint information.
- Identify allegations.
- Contact complainants to review allegations and to clarify issues identified*.
- Review last survey report, when needed.
- Prepare a plan of approach for on-site visit.

On-Site Investigation

- Conduct entrance conference to identify the general purpose of the visit and to schedule potential formal interviews.
- Tour applicable areas of the facility to observe for evidence of mismanagement of personal belongings.
- Observe the following:
 - ▶ Physical security of building (i.e., locks, alarms, exit doors, storage/closet areas have doors)
 - ▶ Who has access to the facility or residents' rooms?
 - ▶ Observe how personal items are secured.
 - ▶ How are personal items identified?
 - ▶ How does staff intervene with residents who wander into others' rooms?
 - ▶ Who has access to secured units?
- Interview resident, staff, family members, visitors and other persons related to the allegation(s) and/or beneficial to the investigation.
- Sample questions for staff include:
 - ▶ What is your procedure when a theft is reported?
 - ▶ What is your system to prevent theft?
 - ▶ Who has keys to residents' locked boxes or areas?
 - ▶ What is your system to ensure laundered items are returned to individuals?
 - ▶ What is your system to ensure the identification of individuals' personal possessions?
 - ▶ How do you manage residents who wander into other residents' rooms?
 - ▶ Has theft from the facility been a problem?
 - ▶ When and to whom do you report theft?
 - ▶ When do you involve your social services worker in assisting the resident with coping with the loss?
 - ▶ How do you identify and assist residents who cannot protect their possessions or report theft to ensure their possessions are secured?
- Sample questions for resident/family include:
 - ▶ Have you ever lost or missed anything?
 - ▶ Do staff ever borrow things from you?
 - ▶ Do staff ever use your things without permission?
 - ▶ To whom do you report missing property?
 - ▶ What does the facility do when you report things missing?
 - ▶ Who else knew of your missing items?
 - ▶ How was the situation resolved? What did the facility tell you about it?
- Review policies/procedures and admission packets relative to inventory of residents' personal items and reporting of lost items and theft.
- Review facility records related to the following:
 - ▶ Previous thefts, complaints, investigation, resolutions, corrective actions, and steps taken to prevent reoccurrence
 - ▶ Screening of potential employees for prior problems with theft (i.e., criminal convictions, nurse aide registry, etc.)
 - ▶ Personal property inventories
 - ▶ Resident Council meeting minutes concerning complaints

- ▶ Court or law enforcement reports
- ▶ Grievance file
- ▶ Staff training records
- ▶ Staffing records
- ▶ Employee personnel files
- Compile data and discuss preliminary findings with the administrative staff during the exit conference.

Off-Site Data Analysis/Report Writing

- Obtain records from other agencies as related to the complaint.
- Complete the interview process as it relates to the allegations by contacting any persons who were not on-site. Make reasonable attempts, using available means.
- Review and analyze the data collected.
- Identify any additional data necessary to make compliance decisions.
- Respond to incoming communication related to the complaint.
- Document the findings, following the Principles of Documentation guidelines.
- Document if the allegations were or were not validated.
- Write the citations, if applicable.
- Contact the complainant(s) to relate findings*.

* Does not apply to facility reported incidents.

7230. Refusal to Re-admit Following Hospitalization

This process is used to investigate allegations of failure to hold the bed open during a period of hospitalization, or to readmit a resident to his/her bed or to the next available bed if the bed-hold period has been exceeded or a bed hold was not requested.

Off-Site Preparation

- Review OBRA Regulations:
 - ▶ F205 42 CFR 483.12(b)(1) and (2)
 - ▶ F206 42 CFR 483.12(b)(3)
- Review state requirements:
 - ▶ M348 Section 20201(3)(e)
 - ▶ M998 Section 21777(3) (regulation text must be entered under this final observations' tag)
- Review other pertinent regulations relative to the issues as identified through contact with the complainant(s) prior to the on-site visit*.
- Review the complaint information.
- Identify all allegations.
- Contact the complainant(s) to review allegations and to clarify issues identified*.
- Review the last survey report, when needed.
- Prepare a plan of approach for on-site visit.

On-Site Investigation

- ☐ Conduct an entrance conference to identify the general purpose of the visit and to schedule potential formal interviews.
- ☐ Tour the facility to determine and record the number of empty beds.
- ☐ Interview the social worker and/or other staff to determine bed hold policies and the right to return to the next available bed.
- ☐ Interview the ombudsman, if available, to see if they have any information related to re-admissions at the facility.
- ☐ Interview the resident, staff, family members, visitors and other persons related to the allegations and/or beneficial to the investigation.
- ☐ Review admission, transfer and discharge policies/procedures as well as the resident's medical record and business file for required transfer justification. Make note of the following:
 - ▶ The date the hospital notified the facility that the resident was ready for discharge.
 - ▶ Why the resident did not return to the facility by reviewing closed record.
 - ▶ The current status of resident.
 - ▶ The payor source (Medicare, Medicaid, etc.) of the resident prior to hospitalization and at re-admission.
- ☐ Review admission/discharge records to identify any other residents who were admitted while the subject of the complaint was denied re-admission.
- ☐ Compile the data and discuss preliminary findings with the administrative staff during the exit conference.

Off-Site Data Analysis/Report Writing

- ☐ Obtain records from other agencies as related to the complaint.
- ☐ Complete the interview process as it relates to the allegations by contacting any persons who were not on-site. Make reasonable attempts, using available means.
- ☐ Review and analyze data collected.
- ☐ Identify any additional data necessary to make compliance decisions.
- ☐ Respond to incoming communication related to the complaint.
- ☐ Document findings following Principles of Documentation guidelines.
- ☐ Findings must include the following items:
 - ▶ The date the hospital notified the facility that the resident was ready for discharge.
 - ▶ The dates any other residents were admitted while the resident who was the subject of the complaint was denied re-admission.
 - ▶ The current status of the resident.
 - ▶ The payor source of the resident prior to hospitalization.
 - ▶ The payor source of the resident at re-admission.
- ☐ Document if the allegations were or were not validated.
- ☐ Write the citations, if applicable.
- ☐ Contact the complainant(s) to relate findings*.

* Does not apply to facility reported incidents.

7235. Hydration, Nutrition and Unintended Weight Loss

This process is used to investigate allegations of failure to maintain adequate resident hydration and nutrition and prevent unintended weight losses.

Off-Site Preparation

- Review OBRA Regulations:
 - ▶ F272 42 CFR 483.20(b)(1)
 - ▶ F273 42 CFR 483.20(b)(2)
 - ▶ F279 42 CFR 483.20(k)
 - ▶ F281 42 CFR 483.20 (k)(3)(1)
 - ▶ F282 42 CFR 483.20(k)(3)(ii)
 - ▶ F309 42 CFR 483.25
 - ▶ F325 and F326 42 CFR 483.25(i)
 - ▶ F327 42 CFR 483.25(j)
- Review state requirements:
 - ▶ M346 Section 20201(2)(e)
 - ▶ M688 Rule 707(4)(m)
 - ▶ M407-412 Rule 803
- Review other pertinent regulations relative to the issues as identified through contact with complainant(s) prior to the on-site visit*.
- Review the resident investigative protocol for hydration.
- Review the complaint information.
- Identify all allegations.
- Contact the complainant(s) to review allegations and to clarify issues identified. Document time and date that contact was made*.
- Review the last survey report.
- Review the 3 Quality Indicator Reports (Q.I.) reports to pre-select potential residents with the same problem(s).
- Prepare a plan of approach for on-site visit.

On-Site Investigation

- Conduct an entrance conference to identify the general purpose of the visit and to schedule potential formal interviews.
- Tour applicable areas of the facility to observe if preventative strategies relative to high-risk residents have been implemented, if needed.
- Observe the resident(s) of concern for signs and symptoms of dehydration as it relates to their clinical condition and the physical environment.
- Observe that hydration needs are being met and nutrition intervention is followed.
- Select the sample based on professional analysis of the data collected from the Q.I. Reports and during the tour.
- Conduct necessary follow-up observations of the resident(s) in question and/or other high-risk residents.

- Interview direct care givers and management personnel to ascertain if they have the knowledge required to provide care to the subject(s) of the complaint and/or other high-risk residents.
- Sample questions for staff include:
 - ▶ Can you tell any difference between regular diets and therapeutic diets?
 - ▶ When do you serve second portions?
 - ▶ Are menus followed?
 - ▶ When are snacks served?
 - ▶ What snacks are served?
 - ▶ How do you ensure that meals are varied throughout the week or month?
 - ▶ How do you ensure that menus reflect recommended dietary allowances?
 - ▶ Which residents receive dietary supplements and what are they?
 - ▶ What is your procedure for offering substitutes?
- Complete the formal interviews. Sample questions for resident/family include:
 - ▶ Do you like the food? If not, why?
 - ▶ How does staff react when you ask for substitutes or second portions?
 - ▶ What happens when you ask for a second portion?
 - ▶ Are you on a special diet?
 - ▶ Are you getting enough to eat?
 - ▶ What kinds of snacks do you receive?
 - ▶ What happens when you don't like the food?
 - ▶ Do they serve what is posted on the menus?
 - ▶ Do you get assistance with eating when you need it?
 - ▶ Did you have to wait a long time in the dining room prior to having your meal served? If so, how long?
 - ▶ Does the food look appetizing?
 - ▶ How well do you like the way food is seasoned?
 - ▶ How often is the food overcooked or undercooked?
 - ▶ How much input do you have in menu planning?
- Review the clinical record of the subject(s) of the complaint to verify the following:
 - ▶ Does review of the medical record indicate that weight losses have occurred, and why?
 - ▶ Do menus reflect recommended dietary allowances?
 - ▶ Are diets accurate, adequate, and based on individual need?
 - ▶ To what extent does the dietician participate in interdisciplinary care planning?
 - ▶ Is the food being served according to the menu?
 - ▶ Does the physician prescribe the therapeutic diet?
 - ▶ Are dietary concerns addressed on the MDS and the Comprehensive Care Plan?
 - ▶ If a significant change is identified (i.e., weight loss, decline in eating ability), is there an assessment as to the cause and progress notes to show how the resident is responding to the treatment plan? If not responding, can you see evidence of what changes were made in the approaches based on the assessment?
 - ▶ Are menus varied and prepared in advance?
 - ▶ Review dietary intake records.
 - ▶ Review Resident Council minutes or recommendations from family groups related to food complaints.

- ❑ Review the physician's orders, comprehensive resident assessment/care plan, nutritional assessment, laboratory and interdisciplinary progress notes to determine if appropriate care interventions were provided.
- ❑ Compile the data and discuss preliminary finds with the administrative staff during the exit conference.

Off-Site Data Analysis/Report Writing

- ❑ Obtain records from other agencies as related to the complaint.
- ❑ Complete the interview process as it relates to the allegations by contacting any persons who were not on-site. Make reasonable attempts, using available means.
- ❑ Review and analyze the data collected.
- ❑ Identify any additional data necessary to make compliance decisions.
- ❑ Respond to incoming communication related to the complaint.
- ❑ Document the findings following the Principles of Documentation guidelines.
- ❑ Document if the allegations were or were not validated.
- ❑ Write the citations, if applicable.
- ❑ Contact the complainant(s) to relate findings*.

* Does not apply to facility reported incidents.

7240. Improper Food and Hot Beverage Temperatures

This process is used to investigate allegations of failure to prepare and store foods at safe temperatures or to serve food and beverages at palatable temperatures. Although state and federal regulations do not specify temperatures appropriate to the consumption of hot beverages, surveyors may infer from the following chart that beverage temperatures that cause harm to a resident from contact are also inappropriate for beverage consumption:

Water Temperature	Time to Receive Second Degree Burn	Time to Receive Third Degree Burn
120 degrees	8 minutes	10 minutes
124 degrees	2 minutes	4 minutes
131 degrees	17 seconds	30 seconds
140 degrees	3 seconds	5 seconds
150 degrees	<1 second	1 second

Off-Site Preparation

- ❑ Review OBRA Regulations:
 - ▶ F364 42 CFR 483.35(d)(1)
 - ▶ F371 42 CFR 483.35(h)(2)
- ❑ Review state requirements:
 - ▶ M411 Rule 803(5)
 - ▶ M426 Rule 1322(6)
 - ▶ M427 Rule 1322(7)

- Review other pertinent regulations relative to the issues as identified through contact with the complainant(s) prior to the on-site visit*.
- Review the complaint information.
- Identify all allegations.
- Contact the complainant(s) to review allegations and to clarify issues identified*.
- Review the last survey report, when needed.
- Prepare a plan of approach for on-site visit.

On-Site Investigation

- Conduct an entrance conference to identify the general purpose of the visit and to schedule potential formal interviews.
- Tour applicable areas of the facility to interview and observe residents for evidence of nutritional deficits.
- Observe for unadministered and unsafe storage of foods in resident rooms and kitchen area during the tour.
- Observe tray preparation and request a test tray.
- Test the food temperatures in the steam table including substitutions of the food to be served.
- Monitor meal distribution and resident response in the dining areas and/or resident rooms.
- Interview resident(s), staff, family members, visitors and other persons related to the allegation(s) and/or beneficial to the investigation.
 - ▶ Sample questions for resident/family include:
 - Do you like the temperature of the food served to you?
 - If not, do you send it back for hot food?
 - Do you need assistance with eating before your food gets cold?
 - Is it a particular meal?
 - Type of food, weekends, what groups of residents are affected?
 - ▶ Sample questions for staff include:
 - Describe the process for delivering and serving food.
 - Do residents complain of cold food?
 - How long does it take to serve food?
 - Are room trays served before or after the dining room is served?
 - Are there enough staff to feed residents before their food is cold?
- Review facility records pertinent to the allegations.
 - ▶ Recorded food temperatures for the last 30 days.
 - ▶ Food intake
 - ▶ Resident council minutes
 - ▶ Resident grievance files
 - ▶ Staffing records
- Compile the data and discuss preliminary findings with the administrative staff during the exit conference.

Off-Site Data Analysis/Report Writing

- ☐ Complete the interview process as it relates to the allegations by contacting any persons who were not on-site. Make reasonable attempts, using available means.
- ☐ Review and analyze the data collected.
- ☐ Identify any additional data necessary to make compliance decisions.
- ☐ Respond to incoming communication related to the complaint.
- ☐ Document the findings following the Principles of Documentation guidelines.
- ☐ Document if the allegations were or were not validated.
- ☐ Write the citations, if applicable.
- ☐ Contact the complainant(s) to relate findings*.

* Does not apply to facility reported incidents.

7245. Hot Water

This process is used to investigate allegations of failure to maintain hot water temperatures within required the range of 105 to 120 degrees.

Off-Site Preparation

- ☐ Review OBRA Regulation:
 - ▶ F323 42 CFR 483.25(h)(1)
- ☐ Review state requirements:
 - ▶ M577 Rule 1317(9)
- ☐ Review other pertinent regulations relative to the issues as identified through contact with the complainant(s), prior to the on-site visit*.
- ☐ Review the complaint information.
- ☐ Identify all allegations.
- ☐ Contact the complainant(s) to review allegations and to clarify issues identified*.
- ☐ Review the last survey report, when needed.
- ☐ Prepare a plan of approach for on-site visit.

On-Site Investigation

- ☐ Conduct entrance conference to identify the general purpose of the visit and to schedule potential formal interviews.
- ☐ Tour the entire facility with facility representative.
- ☐ Use an approved thermometer to take hot water temperatures at residents' hand washing sinks and bathing fixtures throughout the facility during a tour. Allow hot water to run at full flow for a few minutes until maximum hot water temperature has been achieved as indicated by no further temperature increases registered by the thermometer.
- ☐ Ask staff and residents if their baths are comfortable or if the water temperature fluctuates cold/hot. Check if anyone has been scalded/sent to the hospital within the past 90 days.
NOTE: If the complaint not validated proceed the last item below.
- ☐ Review a sample of incident reports related to the issues that occurred in the last 90 days.

- ❑ Tour and inspect the hot water heaters in the boiler rooms for condition, proper mixing valve operation and state of repair of equipment.
- ❑ Review facility preventive maintenance procedures to flush hot water heaters, monitor domestic hot water temperatures, service routine on mixing valves.
- ❑ Review maintenance logs, work orders and corrective repair log.
- ❑ Question maintenance and management staff regarding plans for emergency repair/replace defective equipment. Review timetable for installation of new equipment.
- ❑ Contact the Survey Monitor/Licensing Officer to report existing hazardous condition(s).
- ❑ Compile the data and discuss preliminary findings with the administrative staff during the exit conference.

Off-Site Data Analysis/Report Writing

- ❑ Obtain records from other agencies as related to the complaint.
- ❑ Complete the interview process as it relates to the allegations by contacting any persons who were not on-site. Make reasonable attempts, using available means.
- ❑ Review and analyze the data collected.
- ❑ Identify any additional data necessary to make compliance decisions.
- ❑ Respond to incoming communication related to the complaint.
- ❑ Document the findings following Principles of Documentation guidelines.
- ❑ Document if the allegations were or were not validated.
- ❑ Write the citations, if applicable.
- ❑ Contact the complainant(s) to relate findings*.

* Does not apply to facility reported incidents.

Water Temperature	Time to Receive Second Degree Burn	Time to Receive Third Degree Burn
120 degrees	8 minutes	10 minutes
124 degrees	2 minutes	4 minutes
131 degrees	17 seconds	30 seconds
140 degrees	3 seconds	5 seconds
150 degrees	<1 second	1 second

In nursing homes, there is a risk that residents may be scalded by excessively hot water discharged by plumbing fixtures in sinks in lavatories attached to their rooms, common bathing and shower areas, public restrooms, or other fixtures to which access is not strictly controlled. Nursing Home Rule 1317(9) specifies that “The temperature of hot water at plumbing fixtures used by residents shall be regulated to provide tempered water not less than 105 degrees or more than 120 degrees Fahrenheit.” CMS requirements do not specify acceptable water temperatures but excessively hot water would be cited under Tag F-323 which requires that the resident environment remain as free of accident hazards as possible for residents and/or F-465 which requires the facility to provide a safe environment for residents, staff and the public. The use of F-323 and F-465 will depend on the areas in which the problem exists.

The Bureau of Health Systems will continue to cite state Nursing Home Rule 1317(9) in all cases where water temperatures exceed 120 degrees at one or more locations usually accessible to residents.

Utilize the following criteria to determine the severity level of federal F-tag citations:

- *Severity Level 2* “potential for actual harm” will be used in cases where the water temperature at one or more locations is between 121 and 139 degrees and there have been no scald injuries.
- *Severity Level 3* “actual harm” will be used if there have been first or second degree scald injury(ies).
- *Severity Level 4* “immediate jeopardy” will be used if:
 - ▶ there have been third degree scald injury(ies), and
 - ▶ there is a high likelihood that one or more locations having temperatures at 140 degrees or
 - ▶ higher will be used by residents in the immediate future.

7250. Leaking Roof

This process is used to investigate allegations of leaking roofs in any part of the facility but in particular in areas used by residents.

Off-Site Preparation

- Review OBRA Regulations:
 - ▶ F323 42 CFR 483.25(h)(1)
 - ▶ F456 42 CFR 483.70(c)(2)
- Review state requirements:
 - ▶ M607 Rule 1325(1)
 - ▶ M497 Rule 1304(2).
- Review other pertinent regulations relative to the issues as identified through contact with the complainants(s), prior to the on-site visit*.
- Review the complaint information.
- Identify all allegations.
- Contact the complainants to review allegations and to clarify issues identified*.
- Review the last survey report, when needed.
- Prepare a plan of approach for on-site visit.

On-Site Investigation

- Conduct entrance conference to identify the general purpose of the visit and to schedule potential formal interviews.
- Tour the entire facility with a facility representative.
- Observe ceilings for evidence of a leaky roof such as:
 - ▶ Buckled/stained ceiling tiles
 - ▶ Spalling, discolored paint and plaster around windows and doors

- ▶ Buckets sitting about floor areas to catch rain/roof water; water puddles
- ▶ Actual roof water drippage from the roof down through the ceiling into the building
- Check for safety hazards created by towels, pads, and mats used to soak up water.
- Document the specific room numbers and locations.

NOTE: If the complaint is not validated proceed to the last item below.

- Interview residents and staff about roof leaks.
- Observe if residents' beds are left under leaky areas.
- Review the facility roof maintenance log, work orders, outside contractor billings.
- Interview the roofing contractor to determine if recent repairs were made.
- Discuss with management staff the facility's plan for emergency repair and/or installation of new roof for permanent resolution. If major leaks and safety hazards exist, such as contamination of food and clean supplies, the evacuation plan should be reviewed.
- Contact the Licensing Officer/Survey Monitor to report existing hazardous condition(s).
- Compile the data and discuss preliminary findings with the administrative staff during the exit conference.

Off-Site Data Analysis/Report Writing

- Obtain records from other agencies as related to the complaint.
- Complete the interview process as it relates to the allegations by contacting any persons who were not on-site. Make reasonable attempts, using available means.
- Review and analyze the data collected.
- Identify any additional data necessary to make compliance decisions.
- Respond to incoming communication related to the complaint.
- Document the findings following Principles of Documentation guidelines.
- Document if allegations were or were not validated.
- Write the citations, if applicable.
- Contact the complainant(s) to relate findings*.

* Does not apply to facility reported incidents.

7255. Blocked/Failed Sewage System

This process is used to investigate allegations of sewage system problems resulting in sewage backups in any part of the facility.

Off-Site Preparation

- Review OBRA Regulations:
 - ▶ F253 42 CFR 483.15(h)(2)
 - ▶ F323 42 CFR 483.25(h)(1)
 - ▶ F456 42 CFR 483.70(c)(2)
- Review state requirements:
 - ▶ M578 Rule 1318(3)
- Review other pertinent regulations relative to the issues as identified through contact with the complainant(s), prior to the on-site visit*.

- ☐ Review the complaint information.
- ☐ Identify all allegations.
- ☐ Contact complainant(s) to review allegations and to clarify issues identified*.
- ☐ Review the last survey report, when needed.
- ☐ Prepare a plan of approach for on-site visit.

On-Site Investigation

- ☐ Conduct an entrance conference to identify the general purpose of the visit and to schedule potential formal interviews.
- ☐ Tour applicable areas of the facility to inspect resident toilet rooms, bathing areas, kitchen and laundry areas for evidence of sewage backup, flooding. Inspect basement, if applicable.
- ☐ Flush toilets, test bathtubs and showers for water drainage.
- ☐ Interview residents, staff, and visitors with regard to areas affected by frequent toilet overflow, backup, flooding.
- NOTE:** If the complaint is not validated proceed to the last step below.
- ☐ Tour the mechanical and electrical rooms. Check the sewage pump, grinder and lift pumps. Check for defective equipment and leaking sewer lines in mechanical rooms.
- ☐ Check preventative maintenance logs and corrective repair work orders.
- ☐ Determine if the facility is on a private system or city sewer.
 - ▶ If on a city sewer, check the facility sewer lines and connections for maintenance, proper repair and good condition.
 - ▶ If on a private system, tour the outside area. Review the operational procedure, logs, sampling test results and permit to discharge. Look for flooded areas, odor, weed growth, erosion, flow to contaminate stream, lake, etc.
- ☐ Question management and maintenance staff regarding the effort to make immediate emergency repair and permanent long-range corrective action.
- ☐ Contact the Survey Monitor/Licensing Officer to report existing hazardous conditions.
- ☐ Compile the data and discuss preliminary findings with the administrative staff during the exit conference.

Off-Site Data Analysis/Report Writing

- ☐ Obtain records from other agencies as related to the complaint.
- ☐ Complete the interview process as it relates to the allegations by contacting any persons who were not on-site. Make reasonable attempts, using available means.
- ☐ Review and analyze the data collected.
- ☐ Identify any additional data necessary to make compliance decisions.
- ☐ Respond to incoming communication related to the complaint.
- ☐ Document the findings following Principles of Documentation guidelines.
- ☐ Document if the allegations were or were not validated.
- ☐ Write the citations, if applicable.
- ☐ Contact the complainant(s) to relate findings*.

* Does not apply to facility reported incidents.

7260. Lack of Heat

This process is used to investigate allegations of failure to maintain minimum required temperatures in resident rooms or other areas during cold weather.

Off-Site Preparation

- ☐ Review OBRA Regulations:
 - ▶ F257 42 CFR 483.15(h)(6)
 - ▶ F456 42 CFR 483.70(c)(2)
- ☐ Review state requirements:
 - ▶ M584 Rule 1320(1)
 - ▶ M585 Rule 1320(2)
- ☐ Review other pertinent regulations relative to the issues as identified through contact with the complainant(s), prior to the on-site visit*.
- ☐ Review the complaint information.
- ☐ Identify all allegations.
- ☐ Contact the complainant(s) to review allegations and clarify issues identified*.
- ☐ Review the last survey report, when needed.
- ☐ Prepare a plan of approach for the on-site visit.

On-Site Investigation

- ☐ Conduct an entrance conference to identify the general purpose of the visit and to schedule potential formal interviews.
- ☐ Tour entire facility with a facility representative and observe resident(s) for signs and symptoms of hypothermia.
- ☐ During the tour, take ambient air temperatures measured three feet above the floors in resident rooms, day/dining areas, corridors and lounges with Taylor Dial Thermometer.
NOTE: If the complaint is not validated proceed to the last step below.
- ☐ Question residents to determine if they are warm enough/comfortable.
- ☐ Ascertain that residents have enough blankets and sweaters to provide warmth until heat is restored.
- ☐ Tour mechanical rooms and check on operation and maintenance of boilers and make-up air systems.
- ☐ Review the preventative maintenance logs, and corrective maintenance logs.
- ☐ Assess for safety hazards created by portable electric heaters, candles, kerosene-fired heaters, or any other device used to provide interim heat.
- ☐ Review the facility emergency preparedness protocol (plan) if applicable.
- ☐ Question management staff as to what is being done to immediately correct the heating problems.
- ☐ Contact the Survey Monitor/Licensing Officer to report existing hazardous condition(s).
- ☐ Compile the data and discuss preliminary findings with the administrative staff during the exit conference.

Off-Site Data Analysis/Report Writing

- ☐ Obtain records from other agencies as related to the complaint.
 - ☐ Complete the interview process as it relates to the allegations by contacting any persons who were not on-site. Make reasonable attempts, using available means.
 - ☐ Review and analyze the data collected.
 - ☐ Identify any additional data necessary to make compliance decisions.
 - ☐ Respond to incoming communication related to the complaint.
 - ☐ Document the findings following Principles of Documentation guidelines.
 - ☐ Document if allegations were or were not validated.
 - ☐ Write the citations, if applicable.
 - ☐ Contact the complainant(s) to relate findings*.
- * Does not apply to facility reported incidents.

7265. Lack of Activities

This process is used to investigate allegations of failure to provide sufficient activities appropriate to resident needs.

Off-Site Preparation

- ☐ Review OBRA Regulation:
 - ▶ F248 42 CFR 483.15(f)(1)
- ☐ Review state requirements:
 - ▶ M687 Rule 707(4)(l)
- ☐ Review other pertinent regulations relative to the issues as identified through contact with the complainant(s) prior to the on-site visit*.
- ☐ Review other quality of care/quality of life regulations as they relate to activities.
- ☐ Review the complaint information.
- ☐ Identify all allegations.
- ☐ Contact the complainant(s) to review allegations and to clarify issues identified*.
- ☐ Review the last survey report, when needed.
- ☐ Prepare a plan of approach for on-site visit.

On-Site Investigation

- ☐ Conduct an entrance conference to identify the general purpose of the visit and to schedule potential formal interviews.
- ☐ Tour applicable areas of the facilities to observe evidence of lack of activities.
- ☐ Observe the following:
 - ▶ Is the activity calendar available?
 - ▶ Who is invited to activities?
 - ▶ How does facility staff assist residents to activities?
 - ▶ Do activities address the needs of the population?
 - ▶ Is there sufficient storage space for activity material so that it doesn't interfere with other items?

- ▶ How many residents attending the activity are participating?
- ▶ What are residents who are not at an activity doing?
- ▶ What are residents who are bedfast or room bound doing?
- ▶ What do one-on-one activities consist of?
- ▶ To what extent are volunteers utilized in the activity program?
- Initiate the informal interview process with residents and staff during the tour.
- Select the sample based on professional analysis of the data collected during the tour.
- Determine the necessary follow-up observations of the resident(s) in question and/or other high-risk residents.
- Interview staff, resident(s) and family members:
 - ▶ Sample questions for staff include:
 - How do you coordinate and provide out-of-facility activities for your residents?
 - How do you encourage and assist residents to attend activities?
 - What activities are offered at night and on weekends?
 - What are the special activities for residents with dementia?
 - What activities do you have for residents who are confined to their rooms?
 - How are activities planned or developed?
 - How many residents are provided one-on-one activities? Obtain list.
 - What are the qualifications of the activity director?
 - What is the role of volunteers in the activity program?
 - By what process do you ensure that all residents know the activity schedule?
 - ▶ Sample questions for resident/family include:
 - What activities do you attend?
 - What kinds of things interest you most, and are you able to do them?
 - How are you informed of the activity schedule?
 - Does someone assist you to the activities you choose to attend?
 - Have you been able to attend any out-of-facility activities? If not, why not?
 - Is there sufficient transportation for out-of-facility activities?
 - What activities are available on weekends?
 - What activities are offered to you if you are confined to your room?
 - How do staff assist you with independent activities?
 - How does the facility assist you to maintain access to community events/activities?
 - Do the activities occur the way they are posted on the calendar?
 - What activities would you like that are not offered here?
 - Which activities were you offered and refused? Why?
- Review the clinical record of the subject(s) of the complaint and residents in the sample.
- Review the most recent comprehensive assessment/care plan, interdisciplinary progress notes with consideration for the following:
 - ▶ Do activities reflect individual resident history indicated by the comprehensive assessment?
 - ▶ Do care plans address activities that are appropriate and individualized for each resident based on the comprehensive assessment?
 - ▶ Are responses to activity interventions identified in progress notes of each resident?
- Review the activity calendar with consideration of the following:
 - ▶ Are activities occurring as planned?

- ▶ Does it reflect interests identified by comprehensive assessment - MDS III.1 Sec B., C., D.?
- ▶ Does it offer activities at hours convenient to the residents (a.m., p.m., evenings, weekends)?
- ▶ Does the calendar reflect cultural and religious interests of residents?
- ▶ Do activities appeal to both men and women of all age groups?
- ▶ Do activities take place in a variety of places?
- ▶ Does the calendar include seasonal and special events?
- ▶ Activity attendance records.
- Complete the formal interviews.
- Compile the data and discuss preliminary findings with the administrative staff during the exit conference.

Off-Site Data Analysis/Report Writing

- Complete the interview process as it relates to the allegations by contacting any persons who were not on-site. Make reasonable attempts, using available means.
 - Review and analyze the data collected.
 - Identify any additional data necessary to make compliance decisions.
 - Respond to incoming communication related to the complaint.
 - Document the findings following Principles of Documentation guidelines.
 - Document if the allegations were or were not validated.
 - Write the citations, if applicable.
 - Contact complainant(s) to relate findings*.
 - Attach pertinent supportive data to the report if the allegations are validated.
 - Notify the Attorney General's Office and/or other regulatory agencies, if needed.
- * Does not apply to facility reported incidents.